BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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# CASE NO. 2021110212

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PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

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# DECISION

April 20, 2022

On November 4, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Sequoia Union High School District. Administrative Law Judge, or ALJ, Linda Dowd heard this matter by videoconference on February 8, 9, 10, 15, 16, 17, and 18, 2022, and March 8, 9, and 10, 2022.

Attorney Deborah Jacobson represented Student. Parents attended the entire hearing on Student's behalf. Attorney Jeffery Maisen represented Sequoia. Ilja Van Laar, Sequoia's Special Education Executive Director, attended the entire hearing on Sequoia's behalf.

OAH continued the matter to March 28, 2022, for closing briefs. Both Student and Sequoia timely submitted a closing brief. The record was closed, and the matter was submitted on March 28, 2022.

## ISSUES

1. Did Sequoia deny Student a free appropriate public education, or FAPE, from May 2020, to October 10, 2020, by failing to fulfill its child find obligation to timely identify, locate, and evaluate Student for special education and related services?
2. Did Sequoia deny Student a FAPE by failing to develop an appropriate individualized education program, or IEP, at the December 17, 2020 IEP team meeting by:
    a. Failing to develop appropriate and adequate goals,
    b. Failing to offer appropriate services and supports to enable Student to make progress on IEP goals,
    c. Failing to include anyone familiar with Student's therapeutic needs, and
    d. Offering generic services and supports at a residential treatment center with a behavioral modification of therapeutic support, which had already proved ineffective and harmful to Student?

3. Did Sequoia deny Student a FAPE during the December 17, 2020, and February 10, 2021 IEP team meetings by determining Student's placement without parental participation then offering the placement to Parents with a take it or leave it position?
4. Did Sequoia deny Student a FAPE at the May 26, 2021 IEP team meeting by failing to offer Student an appropriate placement in the least restrictive environment?
5. Did Sequoia deny Student a FAPE by failing to have an IEP in place at the beginning of the 2021-2022 school year?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (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 Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- 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
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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, assessment, or educational placement of the child, or the provision of a

free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and has the burden of proof on the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 17 years old and in twelfth grade at the time of hearing. Parents resided within Sequoia's geographic boundaries at all relevant times. Student was placed at several residential facilities during the relevant time period. Student first became eligible for special education under the eligibility category of emotional disturbance on December 17, 2020.

## ISSUE 1: DID SEQUOIA DENY STUDENT A FAPE FROM MAY 2020 TO OCTOBER 10, 2020, BY FAILING TO FULFILL ITS CHILD FIND OBLIGATION TO TIMELY IDENTIFY, LOCATE, AND EVALUATE STUDENT FOR SPECIAL EDUCATION AND RELATED SERVICES?

Student contends Parents' reports in May 2020 to Sequoia of Student's severe mental illness, anxiety, depression, and inability to attend school or complete schoolwork or homework triggered Sequoia's child find obligation. Student also contends Sequoia's delay in assessing Student for special education services denied her

a FAPE because she was unable to attend school between May 4, 2020, and January 2021. Student contends that if Sequoia had assessed Student in May 2020, or September 2020, she would have been placed in a residential treatment center before January 2021.

Sequoia contends Student's functioning at school was unremarkable as she was a high achieving student without any academic or behavior concerns to trigger Sequoia's child find duty. Sequoia further contends Parents' notification to Sequoia of Student's mental health concerns in May 2020 was only to excuse her from work for the remainder of the year. Sequoia contends it was not unique to Student to have parents request their student be excused from work as many other students had difficulty with distance learning in spring 2020.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321 and 300.501.)

Student was in tenth grade at Woodside High School during the 2019-2020 school year. Student excelled in school, maintained "A" grades in all classes, and took mostly advanced placement courses. During the spring of 2020 Student started to experience severe depression and anxiety. By early May 2020 Student's depression, anxiety, and self-harm were significant enough that Parents were looking into inpatient mental health treatment programs.

Mother emailed Student's English teacher, Anthony Mueller, Student's history teacher Jose Medina, and Student's chemistry teacher Jill Baumgartel on May 4, 2020, at Student's request. Mother informed all three teachers that Student was suffering severely from mental health issues and Parents were considering a residential rehabilitation facility so Student would not injure herself. Mother asked the teachers to excuse Student from assignments so that she would not fail her classes. All three teachers responded to Mother that they would excuse Student from additional assignments. Student's teachers expressed concern about her health and safety, but none of them suggested an assessment for special education or forwarded Parents' concerns to anyone else. None of Student's teachers informed Parents that Sequoia could provide special education services for mental health issues. Parents thought special education services were only for physical disabilities or learning disabilities.

In addition to contacting Student's teachers, Mother also emailed Student's counselor Sharlett Downing on May 12, 2020. Mother informed Downing that Student was suffering severely from major depressive disorder and generalized anxiety. No one from Sequoia provided Parents with any information about special education for the duration of the 2019-2020 school year. Student did not attend virtual classes after May 2020 or complete any additional schoolwork. Student passed her classes because all classes were pass/fail for the spring 2020 semester due to the Covid-19 pandemic.

A school district is required to actively and systematically seek out, identify, locate, and evaluate all children with disabilities, including homeless children, wards of the state, and children attending private schools, who are in need of special education and related services, regardless of the severity of the disability, including those individuals advancing from grade to grade. (20 U.S.C. § 1412(a)(3)(A); Ed. Code, § 56171, 56301, subds. (a) and (b).) This duty to seek and serve children with disabilities is known

as "child find." A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Ed., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (*Cari Rae S.*).) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

Here, Sequoia had actual knowledge as of May 2020 that Student suffered from anxiety and depression. Not only did Parents inform Sequoia of Student's mental health issues but Student stopped attending all classes and did not complete any further work. Sequoia had no reason before May 2020 to suspect Student may have a disability. However, Parents' May 4, 2020, emails to Student's teacher and May 12, 2020, email to Student's counselor put Sequoia on notice that Student was exhibiting symptoms of a disability covered under the IDEA. Sequoia was aware that Student's anxiety and depression were so severe that Student stopped attending classes and completing work.

Sequoia had a duty to evaluate Student for special education and related services beginning in May 2020, which it failed to meet. If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot evade that responsibility by substituting informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121.) At the same time, a medical or psychological diagnosis pursuant to the Diagnostic and Statistical Manual of Mental Disorders is not synonymous with eligibility under the IDEA. (*Letter to Coe*, 32 IDELR 204, Sept. 14, 1999.) Sequoia could not ignore the evidence that Student had a

disability and might require special education services because she had good grades. (*A.P. v. Pasadena Unified School Dist.* (C.D. Cal. Jan. 26, 2021, Case No. CV 19-7965-MWF (SSx)) 2021 WL 810416.) Here, Parents put Sequoia on notice that Student had a suspected disability and Sequoia failed to timely act on that notice.

Violations of child find, and of the obligation to assess a student once found, are procedural violations of the IDEA and the Education Code. (*Cari Rae S.*, *supra*, 158 F. Supp. 2d at p. 1194; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

Student returned to Woodside High School for eleventh grade on August 17, 2020. By September 9, 2020, Student was once again in crisis and emailed her English teacher, Aaron Vanian, for leniency due to her declining mental health issues. Student informed Vanian she was hospitalized over the summer and did not want to return to an inpatient program. Student also emailed Downing to request a 504 Plan due to her mental health issues on September 9, 2020. Downing started the 504 Plan process for Student but did not refer Student for a special education assessment despite the email from Parents the previous May.

On September 16, 2020, while Sequoia was coordinating the 504 Plan process, Student attempted suicide. Student was placed on a 72-hour hold because of the attempt. Parents notified Sequoia of the psychiatric hold and attempted suicide on September 17, 2020. Parents also informed Sequoia that Student was being treated for major depressive disorder, generalized anxiety disorder, and excoriation disorder. Sequoia held an initial 504 Plan meeting and created a 504 Plan for Student on September 24, 2020.

Sequoia did not offer an assessment plan for special education or discuss special education during the September 504 Plan meeting, despite having knowledge of Student's depression. Sequoia's failure to offer Parents an assessment plan once on notice of Student's depression and anxiety resulted in a denial of FAPE. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, and that special education services may be necessary to address the disability must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (citing *Fuhrmann v. East Hanover Board of Ed*. (3rd Cir. 1993) 993 F.2d 1031).) Further, a student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.)

Sequoia's failure to offer an assessment plan for special education eligibility deprived Parents of the ability to meaningfully participate in Student's educational program. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483 (*Target Range*).) In *Target Range, supra,* the court recognized the importance of adherence to the procedural requirements of the IDEA but noted that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id*. at 1484.) Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the individualized education program process. (*Ibid*.) These requirements

are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if it:

- 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 child; or
- caused a deprivation of educational benefits.

(20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

After the initial 504 Plan meeting, on September 28, 2020, Parents emailed Sequoia to request a special education assessment. Parents placed Student at Discovery Mood, an inpatient treatment facility, on September 30, 2020, before they received an assessment plan from Sequoia. Sequoia held a second 504 Plan meeting on October 2, 2020, and finally presented Parents with a special education assessment plan. However, during the October 2, 2020 504 Plan meeting, Sequoia did not discuss the special education assessment process, timelines, or the continuum of placement options available if Student were to qualify for special education.

Student did not like Discovery Mood so Parents, with the assistance of their educational consultant, Jennifer Taylor, found a wilderness program, Evoke Therapy Wilderness Program, for Student to attend. Student began attending Evoke on October 13, 2020, at Parents' expense.

Under *Target Range, supra*, 960 F.2d 1479, 1484, Sequoia's delay in offering Parents an assessment plan until October 2020 was a procedural violation that met all three elements of Education Code section 56505, subdivision (f)(2). Sequoia did not begin the assessment process until October 2020. As a result of Sequoia's delay in assessing Student, Parents were left on their own to find a placement suitable to address

Student's severe mental health needs at their expense. Student had no access to special education placement, services or supports. Student proved Sequoia violated its child find obligation to Student in May 2020 by failing to timely initiate the assessment process to determine special education eligibility after it was on notice of Student's severe mental health needs. Student proved Sequoia denied her a FAPE.

## ISSUE 2: DID SEQUOIA DENY STUDENT A FAPE BY FAILING TO DEVELOP AN APPROPRIATE IEP AT THE DECEMBER 17, 2020 IEP TEAM MEETING?

### ISSUE 2A: SOCIAL EMOTIONAL GOAL WAS NOT APPROPRIATE

Student contends Sequoia's one social emotional goal was immeasurable and overbroad and would not have allowed the IEP team to determine if she made progress on the goal. Student further contends Sequoia did not develop goals in all areas of need including depression, anxiety, self-esteem, self-injurious behavior and coping skills.

Sequoia contends Student alleged it failed to implement appropriate and adequate goals. Sequoia further contends it developed appropriate and adequate goals at the December 17, 2020 IEP team meeting and that any failure to implement the goals was because Parents privately placed Student. Sequoia conceded the social emotional goal's measurability could be improved upon, but because this was Student's initial IEP, once Student was placed in a residential treatment center the IEP team would meet for a 30-day review and likely need to update her goals. Finally, Sequoia contends the goals were clarified in the prior written notice it sent Parents on January 21, 2021.

Sequoia's initial assessment found Student eligible for special education under the eligibility category of emotional disturbance based on significant mental health

problems. Dr. Joseph Miller, Woodside High School's psychologist, conducted Student's initial special education assessment and noted when Student's depression was high her grades and academic engagement dropped significantly. Due to COVID-19 constraints Dr. Miller was not able to meet with Student in person. However, Dr. Abby Jenkins conducted an independent psychological assessment for Student in November 2020 and was able to meet with Student in person. Dr. Miller used Dr. Jenkins's test results in the initial assessment to qualify Student for special education services. Dr. Jenkins identified Student's areas of need as anxiety, depression, self-injurious behaviors, relationships and boundaries, and self-esteem. Dr. Miller also incorporated results from a mental health assessment Brianna Bitz, Sequoia's educational related mental health therapist, conducted as part of Student's initial special education assessment.

The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Ed. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106, reversed in part on other grounds by *Schaffer*, *supra*, 546 U.S. 49, 56-58.).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of

academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

Sequoia developed one social emotional goal for Student in the December 17, 2020 IEP. The identified area of need was anxiety and depression. Student's baseline was that she was experiencing anxiety and depression leading to absences from school and she was using learning tools to help address the anxiety before it was overwhelming. Student's goal was to learn and implement coping skills to help her manage symptoms of anxiety and depression to come to and remain in the classroom for instruction 50 percent of the time as measured by attendance records, student and family reports, therapist, and case manager.

Lisa Reed, Sequoia's special education program specialist developed Student's goal and reviewed it at the December 17, 2020 IEP team meeting. Reed wrote the goal as a general goal that would be worked on and looked at again as Student's teachers got to know Student. Neither Dr. Miller nor Bitz provided any input on the goal during the IEP team meeting. Clare Chandler, Sequoia's special education coordinator, reported that Reed developed the goal with input from Dr. Miller and Bitz. Both Dr. Miller and Bitz testified at hearing about their roll in assessing Student and their participation at the initial IEP team meeting. Neither Dr. Miller nor Bitz assisted Reed in drafting the social emotional goal.

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE: "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer … a meaningful benefit." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).)

Chandler understood the baseline to read that Student was not attending school at all therefore the baseline was zero. Dr. Miller reviewed the goal baseline and could not determine how often Student was attending school. There was no information in the baseline of the goal as to how often Student was attending school. No IEP team member from Sequoia explained how often Student was attending school during the initial IEP team meeting nor was that information documented anywhere in the IEP. Student's goal was to attend school 50 percent of the time. However, without knowing how often Student was attending school at the time the goal was written, there is no way to determine if the goal was reasonably calculated to confer meaningful benefit.

Reed and Chandler both testified that the goal would be updated at Student's 30-day IEP review once Student was placed at a residential treatment facility. Sequoia had a duty to develop an appropriate goal at the initial team meeting based upon the information it had at the time. (*Adams, supra* 195 F.3d at p. 1149.) Sequoia's duty to

create an appropriate goal was regardless of any possible future modifications or changes at subsequent IEP team meetings. As to the social emotional goal, Sequoia did not create an appropriate measurable goal at the time of the initial IEP team meeting. Updating the goal at a 30-day IEP team meeting, or in a prior written notice, did not relieve Sequoia of its duty to develop measurable annual goals based upon present levels of academic achievement and functional performance at the initial IEP team meeting. Student proved Sequoia denied her a FAPE in the December 17, 2020 IEP by failing to develop appropriate and adequate social emotional goals.

## ISSUE 2B: APPROPRIATE THERAPEUTIC SERVICES AND SUPPORTS

Student contends Sequoia's proposed therapeutic services were based on one inappropriate goal therefore they failed to meet Student's needs. Student further contends she required more group therapy than Sequoia offered.

Sequoia contends Student did not provide any evidence or testimony regarding any services or supports aside from the therapeutic services Sequoia offered at Diamond Ranch Academy. Sequoia further contends its offer of related services and supports was based on Student's placement in a highly intensive therapeutic residential center and was wholly appropriate at the time it was made. Sequoia contends the supports and services offered were designed to address all of Student's then identified social emotional needs.

Student alleged the therapeutic services Sequoia offered in the December 17, 2020 IEP were insufficient. Student did not present any evidence or argument about any other services or supports, therefore, this Decision is limited to addressing the

therapeutic services Sequoia offered. Sequoia offered Student 60 minutes weekly of individual counseling, 120 minutes weekly of group counseling, and 120 minutes monthly of parent counseling. Chandler reviewed the services at the December 17, 2020 IEP team meeting but did not explain how Sequoia determined the amount or duration of therapeutic services. Neither Dr. Miller nor Bitz provided any input regarding the amount or duration of therapeutic services during the IEP team meeting.

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1 (2017) 580 U.S. ___ [137 S.Ct. 988* (*Endrew*).) Whether Student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams, supra* 195 F.3d at p. 1149.)

Trina Grater was the assistant clinical director at Evoke Therapy Wilderness Program and Student's therapist for the time she attended Evoke. Grater worked with Student for three months, developed treatment goals for Student, and was qualified to make therapeutic recommendations for Student. Grater opined that Student required more than one hour a week of individual therapy. Grater recommended two or three hours per week of individual therapy, with a significant amount of group therapy. Student was transitioning from a program where she received group therapy for almost all her waking hours. Grater opined that group therapy is extremely successful, but Student would need more than two hours per week. Grater also opined that Student

and Parents would need more than two hours per month of family therapy. The purpose of family therapy was not simply to update Parents on Student's progress, but for Parents to work on therapeutic issues as well.

Dr. Jenkins made therapy recommendations for Student after assessing her and formed an opinion on the amount of counseling services Student required. Dr. Jenkins recommended two hours of individual therapy per week as Student transitioned out of Evoke. Dr. Jenkins based her opinion on her assessment, knowledge of Student and Evoke's program, and research studies that suggest one hour of therapy is not sufficient to bring Student's levels of acute anxiety and depression into remission quickly enough. Dr. Jenkins also recommend daily group therapy in addition to individual therapy and weekly family therapy.

Both Chandler and Reed opined that the amount and duration of therapeutic services was appropriate. However, neither Chandler nor Reed evaluated Student or provided therapeutic services to Student. Conversely, Dr. Jenkins evaluated Student and Grater provided direct services to Student. Therefore, their opinions about the amount of therapeutic services Student required were given more weight. Student proved Sequoia denied her a FAPE by failing to offer appropriate therapeutic services.

## ISSUE 2C: RELEVANT IEP TEAM MEMBERS

Student contends Sequoia's failure to include someone familiar with her therapeutic needs at the December 17, 2020 IEP team meeting denied her a FAPE because Sequoia did not consider her individual therapeutic needs. Student further

contends this denied her a FAPE because Parents had no insight as to what goals and services Student needed since no one with therapeutic knowledge of Student was at the initial IEP meeting to discuss it with Parents.

Sequoia contends all legally required IEP team members were present at the December 17, 2020 IEP team meeting and Sequoia was not required to specifically invite someone familiar with Student's therapeutic needs to the meeting. Sequoia further contends that Parents and their educational consultant were familiar with Student's therapeutic needs as was the school psychologist, Dr. Miller.

Sequoia included all legally required IEP team members at the December 17, 2020 IEP team meeting. Both Parents attended the IEP team meeting along with their educational consultant. Bill Tolles, the jazz band director and one of Student's general education teachers attended the meeting along with Student's French teacher, Laurence Arfi-Tocatlian. Chandler attended along with Reed and program specialist Jennifer Roberts, and Jayanthi Mehta, the special education department chair for Woodside High School. Dr. Miller, who conducted Student's initial special education assessment, and Bitz, who conducted Student's educationally related mental health services assessment, both attended the December 17, 2020 IEP team meeting.

Unless excused in writing, the IEP team must consist of parents or their representative, a regular and special education teacher, a qualified representative of the school district, and an individual who can interpret instructional implications of assessment results. (20 U.S.C. section 1414(d)(1)(B). The IEP team may also include individuals who have the knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).)

Chandler, Reed, and Roberts were all familiar with the continuum of special education programs and services Sequoia could offer. Tolles and Arfi-Tocatlian were both familiar with Student and were Student's general education teachers. Mehta was a special education teacher who taught students with mental health issues. Dr. Miller was qualified to interpret instructional implications of the assessment results.

Student contends Sequoia should have invited Dr. Jenkins or Grater to the December 17, 2020 IEP team meeting to discuss Student's therapeutic needs because neither Dr. Miller nor Bitz were familiar enough with Student to give input on goals or services. The evidence established otherwise. While it may have been helpful to the IEP team to have Dr. Jenkins or Grater participate in Student's initial IEP team meeting, Sequoia was not legally required by Tile 34 Code of Federal Regulations section 300.321(a) to invite either of them to the meeting. That regulation is permissive, not a requirement. Additionally, nothing prevented Student from inviting either Dr. Jenkins or Grater to the IEP meeting.

Sequoia included Miller and Blitz at the IEP team meeting who were familiar with Student's social emotional needs because of their assessments. Student did not prove Sequoia failed to meet the minimal legal requirements for an IEP team at the December 17, 2020 IEP team meeting.

## ISSUES 2D AND 3: GENERIC RESIDENTIAL SERVICES AND PREDETERMINATION

Student contends Sequoia offered inappropriate generic services and supports at a residential treatment center with a behavioral modification modality of therapeutic support which would have been harmful to student. Student further contends Sequoia

did not consider Student's unique, severe, and individual needs when it offered her services and placement at Diamond Ranch Academy, which has a behavioral based program. Student contends Sequoia restricted parental participation by presenting the placement offer at the very end of the December 17, 2020 IEP team meeting and unreasonably expected parents to voice any concerns about a residential treatment center without any information about the offered placement. Student further contends despite Sequoia telling Parents to reach out with any questions, when Parents expressed concerns about the offered placement after the initial IEP team meeting Sequoia did not respond. Student also contends Sequoia continued to restrict parental participation at the February 10, 2021 IEP team meeting by failing to collect any data on how Student was doing at New Haven residential treatment center prior to the IEP team meeting.

Sequoia contends its offer of residential services at Diamond Ranch Academy was appropriate for Student at the time it was offered. Sequoia further contends the program provided specialized academic instruction in a highly therapeutic residential school setting, was designed to address Student's educational and educationally related mental health needs, and provided Student weekly individual, group, and family therapy. Sequoia contends it repeatedly sought Parents input and Parents private providers input before arriving at its FAPE offer to Student at each successive IEP meetings that it held. Sequoia further contends Parents fully participated in Student's IEP process and Sequoia considered their input.

## DECEMBER 17, 2020 IEP TEAM MEETING

Sequoia determined its offer of services and supports of a residential treatment center placement at Diamond Ranch Academy before the initial IEP team meeting on December 17, 2020. In determining the educational placement of a child with a

disability a school district must ensure that the placement decision is made by a group of persons including the parents and other persons knowledgeable about the child. The IEP team must consider the meaning of the evaluation data and the placement options and consider educating the child in the least restrictive environment. (34 C.F.R. § 300.116.)

Sequoia discussed Student and residential treatment center options for her at a lead team meeting. Sequoia's lead team consisted of Van Laar, Chandler, Reed, and Roberts along with two other program specialists and one other special education coordinator. Neither Dr. Miller nor Bitz participated in the lead team discussion about Student. Sequoia did not ensure that Parents were included in the services or placement decision. Chandler also discussed Student with Adam Bangerter, Diamond Ranch Academy's school district liaison prior to the IEP team meeting. At the time Chandler was discussing Student with Bangerter in December 2020, Bangerter was the school district liaison for Diamond Ranch Academy and had held that role since approximately September 2017. Bangerter received his Bachelor of Arts in communication from Dixey College in May of 2021. Bangerter was generally familiar with Diamond Ranch Academy's programs, makeup, campus layout, and the general day in and day out routine of the school. Bangerter was not the person who made acceptance decisions for Diamond Ranch Academy nor was Bangerter knowledgeable about Student or qualified to determine appropriate services or placement for Student.

School staff are permitted to meet in advance of an IEP team meeting to form opinions, compile reports, discuss a child's special education, and otherwise engage in preparatory activities to develop a proposal or response to a parent proposal that will be discussed at a later IEP team meeting. (See, 34 C.F.R. §§ 300.501(b)(1) and (b)(3); *N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 694 (*Knox*), in which the court

stated: "Indeed, without some organization and evaluation [by school staff] prior to the IEP Team meeting, it is unclear how an IEP Team could make reasonable and informed decisions.")

Here, Sequoia did more than meet and discuss Student's needs before the initial IEP team meeting. Sequoia determined not only that Student required a residential treatment center placement before the December 17, 2020 IEP team meeting, but that it would offer Diamond Ranch Academy as the sole option for Student to attend. Chandler was unequivocal in her testimony that she researched residential treatment center options prior to the December 17, 2020 IEP team meeting, reached out to Diamond Ranch Academy to determine if Student would be a good fit, and confirmed Diamond Ranch Academy had a spot available for Student. Chandler considered one other residential treatment center, however, that residential treatment center did not have any availability for new students. Sequoia did not present any other residential treatment center options to Parents during the December 17, 2020 IEP team meeting. Sequoia also did not have anyone from Diamond Ranch Academy attend the IEP team meeting to answer Parents' questions. Sequoia presented its offer of Diamond Ranch Academy without giving Parents any information about Diamond Ranch Academy and without having anyone available at the IEP team meeting to answer Parents' questions.

The child's IEP forms the basis for the placement decision. (34 C.F.R. §§ 300.116((b)(2), 300.552.) Placement decisions can be made only after the development of an IEP and in accordance with its terms. (65 Fed. Reg. 36,591 (June 8, 2000).) Only after the IEP has been developed does a district have a basis for determining where the student's needs can be served. If that process is reversed, there is a danger of denying the student FAPE by developing an IEP to meet a predetermined

setting. (*Spielberg v. Henrico County Pub. School* (4th Cir. 1988) 853 F.2d 256, 258-9, cert. denied, 489 U.S. 1016 (1989); *K.D. v. Depart. of Educ., Hawaii* (9th Cir. 2011) 665 F.3d 1110, 1123.)

Sequoia reviewed the continuum of placement options during the December 17, 2020 IEP team meeting. However, Sequoia offered only one placement option to Parents, Diamond Ranch Academy. The entire IEP team, including Parents, agreed that Student required a residential treatment center placement to receive a FAPE. However, the IEP team did not discuss or offer any different or alternate residential treatment center options during the IEP team meeting. Chandler presented Sequoia's offer of Diamond Ranch Academy during the last few minutes of the initial IEP team meeting. Chandler directed Parents to Diamond Ranch Academy if they had any questions or wanted a virtual tour. No one from Diamond Ranch Academy attended the initial IEP team meeting to discuss Diamond Ranch Academy's program or the types of services and supports it offered.

Sequoia did not have a signed release of information from Student for Diamond Ranch Academy before the initial IEP team meeting. Chandler and Bangerter discussed Student's profile before the IEP team meeting, however, Diamond Ranch Academy could not officially accept Student without a release of information and reviewing the IEP and initial special education assessment. Based on Student's profile, Bangerter thought Student would be a good fit at Diamond Ranch Academy and the placement had room for Student. Sequoia still offered it as the sole location for Student's residential treatment center placement even though Student had not yet been accepted to Diamond Ranch Academy and the IEP team had not discussed the program. Sequoia

did not provide any information about Diamond Ranch Academy to Parents during the initial IEP team meeting other than it was a residential treatment center.

Sequoia decided it would offer Student placement at a residential treatment center at Diamond Ranch Academy before the December 17, 2020 IEP team meeting. Predetermination is a procedural violation of the IDEA that occurs in connection with an IEP team meeting, when a district has decided on its offer prior to the meeting, such as when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. v. Las Virgenes* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 (*Las Virgenes*.) Predetermination causes a deprivation of educational benefits where, absent the predetermination, there is a strong likelihood that alternative educational possibilities for the student would have been better considered. (*M.S. v. Los Angeles Unified School Dist.* (C.D. Cal. September 12, 2016, Case No. 2:15-cv-05819-CAS-MRW) 2016 WL 4925910 at p.12. (citing *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1047).) District team members may form opinions prior to IEP meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D. Ohio, Jan. 17, 2013, No. 1:11- CV-398) 2013 WL 209478, *7.)

Predetermination is an automatic violation of a parent's right of participation under the IDEA. Where predetermination has occurred, "regardless of the discussions that may occur at the meeting, the school district's actions would violate the IDEA's procedural requirement that parents have the opportunity 'to participate in meetings with respect to the identification, evaluation, and educational placement of the child.'" (*Las Virgenes*, *supra*, 239 Fed.Appx. at p. 344, quoting 20 U.S.C. § 1415(b)(1).)

In offering only placement at Diamond Ranch Academy at the December 17, 2020 IEP team meeting, Sequoia prevented Parents' participation in the placement decision, and thus the IEP development process. It prevented a discussion of Parent's concerns regarding the type of therapy offered, the size of the residential treatment facility, the academic rigor of the classes, and the coed nature of the campus. Discussion of these concerns would have allowed the IEP team to reconcile any conflict between different residential treatment centers. Other residential treatment center options may have been considered if the IEP team considered Parents' concerns at an IEP team meeting.

Parents and their educational consultant participated in the December 17, 2020 IEP team meeting, however, the IEP team did not discuss the program details of Diamond Ranch Academy or the types of therapeutic services and supports Diamond Ranch Academy provided. Federal and State law require that a district must afford parents of a child with a disability the opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) The IEP team must consider the concerns of the parent for enhancing the student's education, and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] ["[T]he informed involvement of parents" is central to the IEP process.].) Parental participation in the IEP process is considered "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d

877, 882.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*Knox, supra,* 315 F.3d at p. 693.)

After the December 17, 2020 IEP team meeting Parents immediately discussed Diamond Ranch Academy with Taylor, Grater, and Dr. Jenkins. All three were concerned about the behavioral nature of Diamond Ranch Academy and suggested a different residential treatment center with a relational model of therapy, specifically New Haven residential treatment center. Parents emailed Chandler on December 18, 2020, expressing concerns about Diamond Ranch Academy and shared a letter from Taylor explaining their concerns. Parents sent Chandler two additional letters via email on December 28, 2020, from Dr. Jenkins and Grater reiterating Parents' concerns about Diamond Ranch Academy and requesting Sequoia place Student at New Haven.

Chandler responded to Parents emails on January 6, 2021, with a prior written notice stating Sequoia disagreed with Parents' view of Diamond Ranch Academy. Sequoia did not offer to hold another IEP team meeting to discuss Parents' concerns or otherwise attempt to offer any other placement option. Sequoia did not research New Haven, or any other residential treatment center options, when denying Parents' request to place Student at a different residential treatment center. This constituted predetermination of Student's placement at Diamond Ranch Academy, and therefore deprived Parents of meaningful participation in the decision regarding Student's placement. (*Las Virgenes*, *supra*, 239 Fed.Appx. at p. 344.)

Sequoia's predetermination of Student's placement at Diamond Ranch Academy significantly infringed on parental participation in the IEP process, including Student's

placement decision, types of services and supports offered, and refusal to consider alternative residential treatment centers. Student proved Sequoia denied her a FAPE at the December 17, 2020 IEP team meeting by predetermining her placement without parental participation and failing to discuss the types of services and supports Diamond Ranch Academy offered.

## FEBRUARY 10, 2021 IEP TEAM MEETING

On January 7, 2021, Parents sent Sequoia a 10-day notice that they were placing Student at New Haven. Sequoia responded to Parents' 10-day notice on January 22, 2021, with a prior written notice addressing some of Parents' concerns and suggesting an IEP team meeting. On February 4, 2021, Sequoia emailed Parents an IEP team meeting invitation for February 10, 2021. On the meeting notice Sequoia indicated someone from New Haven would attend, however, Sequoia did not invite anyone from New Haven to attend the meeting.

At the time of the February 10, 2021 IEP team meeting Student had been attending New Haven for almost three weeks. Sequoia did not gather any updated information on Student prior to the IEP team meeting. Nor did Sequoia talk to anyone at New Haven prior to the IEP team meeting. Reeve Knighton, Diamond Ranch Academy's director of academics and special education attended the February 10, 2021 IEP team meeting. Knighton could answer Parents' questions about academics and the size and makeup of Diamond Ranch Academy, but he was not a therapist, nor did he have a background in counseling or psychology that would qualify him to discuss the differences between behavioral therapy and relational therapy.

Sequoia continued to offer Student placement at Diamond Ranch Academy without updating Student's present levels of performance or goals. Sequoia did not

consider placing Student at any other residential treatment center during the February 10, 2021 IEP team meeting. Sequoia reiterated that it was only offering a residential treatment center placement at Diamond Ranch Academy because it believed Diamond Ranch Academy could meet Student's needs. Student proved Sequoia denied her a FAPE at the February 10, 2021 IEP team meeting by presenting one placement option at the meeting and failing to consider other alternatives.

## ISSUE 4: DID SEQUOIA DENY STUDENT A FAPE AT THE MAY 26, 2021 IEP TEAM MEETING BY FAILING TO OFFER STUDENT AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

Student contends Sequoia denied her a FAPE at the May 26, 2021 IEP team meeting by failing to offer an appropriate transitional placement or services and refusing to consider any placement except Diamond Ranch Academy. Student contends she was ready for a step-down program at the May 26, 2021 IEP team meeting. Student also contends that even if she was not ready for a stepdown program, transitioning to Diamond Ranch Academy from New Haven was not an appropriate move for Student. Student contends Sequoia did not review Student's IEP goals or services when it continued to offer placement at Diamond Ranch Academy.

Sequoia contends Student failed to establish that she was ready for a stepdown program therefore its offer of Diamond Ranch Academy remained appropriate. Sequoia further contends Student also failed to establish Lake Tahoe Preparatory school was any less restrictive than Diamond Ranch Academy or New Haven.

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. (See *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 of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, be reasonably calculated to provide the pupil with some educational benefit in light of the child's appropriate circumstances, and in the least restrictive environment. (*Ibid; Rowley*, *supra*, 458 U.S. at p. 188-89; *Endrew, supra,* 580 U.S. ____ [137 S.Ct. 988.)

Placement is determined annually and is based on the child's IEP. It must be as close as possible to the child's home and at the school that he or she would attend if non-disabled unless the IEP team determines otherwise. (*Id.*) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services that he or she needs. (*Id.*) A "specific educational placement" is that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

Sequoia's offer of a residential treatment center placement at Diamond Ranch Academy at the May 26, 2021 IEP team meeting was not reasonably calculated to provide educational benefit. Parents informed Sequoia in the spring of 2021 that Student was ready to transition from New Haven. Reed reached out to New Haven for the first time on May 10, 2021, to gather information for Student's transition back to Sequoia. On May 14, 2021, Parents provided Sequoia with a 10-day notice that Student would be transitioning to Lake Tahoe Preparatory school as a step-down program for the summer of 2021 before transitioning back to Woodside High School for her senior

year. Student's therapist at New Haven, Janay McInnes, supported Student's transition, however, Parents made the decision to transition Student out of New Haven before Student completed the program.

McInnes did not attend the May 26, 2021 IEP team meeting. Instead, Kori Mayeski, New Haven's academic director, and Remington Bassett, Student's family therapist at New Haven attended the IEP team meeting. Mayeski and Bassett provided information that conflicted with what McInnes shared with Parents. Mayeski could not report on Student's therapeutic progress but reported that Student had done well academically. Mayeski also reported Student was leaving the program before completing the standard 10-12 months that most students attend the program.

Reed shared the treatment plan information Sequoia received from New Haven. The report Reed received listed three problem areas and three objectives in each area. The plan identified that Student had only met one objective in one problem area. The plan also listed five phases that students work through. Student's plan listed that she started the third phase on March 3, 2021. No one from New Haven reported on Student's treatment plan.

Bassett shared that Student and Parents had done a lot of great work and were communicating well and that Student did well in the community and academically, but Student was leaving the program early. Bassett did not recommend that Student leave early as she had not completed the full program. Bassett explained the last two phases, integrity and interdependence. Integrity is generally the longest phase and interdependency is usually one or two months prior to a student leaving the program where the student is able to practice the skills they have learned.

Chris Johstoneaux, Lake Tahoe Preparatory school's clinical director also attended the May 26, 2021 IEP team meeting. Johstoneaux was a licensed clinical psychologist with 14 years of experience working at therapeutic boarding schools and residential treatment centers. Johstoneaux explained to the IEP team his familiarity with programs like New Haven and explained that Lake Tahoe Preparatory school was a step down as Student would have more freedom than at New Haven and the program was more relaxed. Student would receive an hour a week of individual therapy with him.

McInnes provided Sequoia with updated information after the May 26, 2021 IEP team meeting that showed Student was in the integrity phase of the program and had met most of her treatment objectives. McInnes clarified during the hearing that the paperwork Sequoia had at the time of the May 26, 2021 IEP team meeting was not updated due to a clerical error. McInnes supported Student's transition to Lake Tahoe Preparatory school and her testimony that Student worked through the program faster than most students was credible. McInnes was a therapist and clinical director at New Haven for seven years and often worked with students like Student who were highly motivated and coming from an intensive program like Evoke. McInnes was Student's primary therapist and the person most qualified to assess Student's readiness for a stepdown program. Sequoia did not have the information from McInnes, that Student was ready to transition to a step-down program, at the time of the May 26, 2021 IEP team meeting.

Sequoia continued to offer a residential treatment center placement based on the information it had at the time of the May 26, 2021 IEP team meeting. Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams, supra,* 195 F.3d at p. 1149.) The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*) Although

Parents were advocating for a stepdown program, the New Haven representatives at the May 26, 2021 IEP team meeting were not. Based upon the conflicting points of view, Sequoia maintained its offer of a residential treatment center.

However, Sequoia's continued offer of Diamond Ranch Academy remained an inappropriate placement offer. At the time of the May 26, 2021 IEP team meeting Student had been at New Haven for about five months. Sequoia did not invite anyone from Diamond Ranch Academy to the May 26, 2021 IEP team meeting. Diamond Ranch Academy accepted Student into its program in February 2021 based on Student's initial IEP and special education assessment. Diamond Ranch Academy did not have any updated information about Student and did not determine if Student would still be a good fit given her progress at New Haven, rendering Sequoia's offer inappropriate based on old information.

Chandler opined that Student would not be harmed by moving from New Haven to Diamond Ranch Academy after five months in the New Haven program and after having made significant progress. Conversely, Johstoneaux opined that the recommendation to move Student from New Haven to Diamond Ranch Academy did not make sense for Student. Moving Student to Diamond Ranch Academy would mean Student would start over which was not a logical progression for Student given the progress she had made having attended a wilderness program and a residential treatment center. Knighton's testimony confirmed Johstoneaux's opinion that when students transition to Diamond Ranch Academy they typically start on the first level and work their way up. That would not have been appropriate for Student given the progress she had made at New Haven.

Johstoneaux's testimony was more persuasive than Chandler's because Johstoneaux had significant experience working at residential treatment centers and was a clinical psychologist who provided therapy directly to students. Chandler had significant experience as a special education teacher and administrator but had not worked at a residential treatment center nor did she have a psychology or psychiatry background. Johstoneaux's testimony was given more weight.

Student proved that Sequoia's FAPE offer at the May 26, 2021 IEP team meeting of placement at Diamond Ranch Academy was not an appropriate placement and therefore denied Student a FAPE.

## ISSUE 5: DID SEQUOIA DENY STUDENT A FAPE BY FAILING TO HAVE AN IEP IN PLACE AT THE BEGINNING OF THE 2021-2022 SCHOOL YEAR?

Student contends Sequoia's failure to hold an IEP team meeting prior to the start of the 2021-2020 school year denied her a FAPE by preventing her from receiving any services at all after coming back from nearly a year in residential treatment. Sequoia contends the December 17, 2020 IEP was the operative IEP for Student and was in place at the beginning of the 2021-2022 school year.

Sequoia developed Student's initial IEP on December 17, 2020. The IDEA defines an IEP as "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324." (34 C.F.R. § 300.22.) Parents consented to eligibility, goals, services, and a residential treatment center placement in the December 17, 2020 IEP, on January 8, 2021. Parents disagreed with the offer of Diamond Ranch Academy. Sequoia held amendment IEP team meetings on

February 10, 2021, and May 26, 2021. Sequoia continued to offer Student placement at Diamond Ranch Academy at the February 10, 2021, and May 26, 2021 IEP team meetings, which Parents declined.

A school district must have an IEP in effect at the beginning of each school year for each child with exceptional needs residing within the district. (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 56344, subd. (c).) The IDEA does not make a district's duties contingent on parental cooperation with, or acquiescence in the district's preferred course of action. (*Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055.)

Here, Sequoia had an IEP in place for Student at the beginning of the 2021-2022 school year. Sequoia scheduled an IEP amendment team meeting for August 9, 2021, and rescheduled that meeting to September 10, 2021, because no one from Lake Tahoe Preparatory school could participate in the August 9, 2021 IEP team meeting to discuss Student's present levels of performance. School started for the 2021-2022 school year on August 11, 2021. Sequoia's December 17, 2020 IEP offer of residential placement was still in effect at the start of the 2021-2022 school year.

Student did not prove Sequoia failed to have an IEP in place at the beginning of the 2021-2022 school year. Parents consented to eligibility, goals, services, and a residential treatment center placement in the December 17, 2020 IEP. Student's next annual IEP team meeting did not need to be held until December 2021.

## CONCLUSIONS AND PREVALING PARTY

As required by 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.

### ISSUE 1:

Sequoia denied Student a FAPE from May 2020, to October 10, 2020, by failing to fulfill its child find obligation to timely identify, locate, and evaluate Student for special education and related services.

Student prevailed on Issue 1.

### ISSUE 2A:

Sequoia denied Student a FAPE by failing to develop an appropriate individualized education program, or IEP, at the December 17, 2020 IEP team meeting by failing to develop appropriate and adequate goals.

Student prevailed on Issue 2a.

### ISSUE 2B:

Sequoia denied Student a FAPE by failing to develop an appropriate IEP at the December 17, 2020 IEP team meeting by failing to offer appropriate services and supports to enable Student to make progress on IEP goals.

Student prevailed on Issue 2b.

## ISSUE 2C:

Sequoia did not deny Student a FAPE by failing to develop an appropriate IEP at the December 17, 2020 IEP team meeting by failing to include anyone familiar with Student's therapeutic needs.

Sequoia prevailed on Issue 2c.

## ISSUE 2D:

Sequoia denied Student a FAPE by failing to develop an appropriate IEP at the December 17, 2020 IEP team meeting by offering generic services and supports at a residential treatment center with a behavioral modification of therapeutic support, which had already proved ineffective and harmful to Student.

Student prevailed on Issue 2d.

## ISSUE 3:

Sequoia denied Student a FAPE during the December 17, 2020, and February 10, 2021 IEP team meetings by determining Student's placement without parental participation then offering the placement to Parents with a take it or leave it position.

Student prevailed on Issue 3.

ISSUE 4:

Sequoia denied Student a FAPE at the May 26, 2021 IEP team meeting by failing to offer Student an appropriate placement in the least restrictive environment.

Student prevailed on Issue 4.

ISSUE 5:

Sequoia did not deny Student a FAPE by failing to have an IEP in place at the beginning of the 2021-2022 school year.

Sequoia prevailed on Issue 5.

## REMEDIES

Student proved Sequoia denied her FAPE by failing to fulfill its child find duty, failing to develop appropriate goals and therapeutic services, and failing to offer an appropriate residential treatment center program, predetermining the FAPE offer at the December 17, 2020, and February 10, 2021 IEP team meetings, and failing to offer an appropriate placement at the May 26, 2021 IEP team meeting. As a remedy for FAPE violations Student requests reimbursement for tuition and fees for New Haven and Lake Tahoe Preparatory school as well as reimbursement for Dr. Jenkins's assessment, Jennifer Taylor's educational consulting fees, and travel to and from New Haven and Lake Tahoe Preparatory school.

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.)

When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at p. 369-371.) Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Ibid*; *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F. 3d 1489, 1496.)

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. (Ed. Code, § 56175; 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra,* 471 U.S. at pp. 369-370 (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE).) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14, [114 S.Ct. 361] (*Florence County*).)

The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent School Dist. v. State Board of Education* (5th Cir. 1986) 790 F.2d 1153, 1161; *J.P. ex rel. Popowitz*

*v. Los Angeles Unified School Dist.* (C.D. Cal. Feb. 16, 2011, No. CV 09-01083 MMM MANX) 2011 WL 12697384, at *23.) Although the parents' placement need not be a "state approved" placement, it still must meet certain basic requirements of the IDEA, such as the requirement that the placement address the child's needs and provide them educational benefit. (34 C.F.R. § 300.148(c); *Florence County, supra,* 510 U.S. at p. 14.)

Reimbursement may be reduced or denied in a variety of circumstances, including whether a parent acted reasonably with respect to the unilateral private placement. (20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); Ed. Code, § 56176.) These rules may be equitable in nature, but they are based in statute.

In *C.B. v. Garden Grove Unified School Dist*. (9th Cir. 2011) 635 F.3d 1155, the Ninth Circuit set forth the standards to be applied in determining whether a private placement is appropriate for the purpose of reimbursement. There, a student had benefited substantially from a private placement, but parents were awarded only partial reimbursement because the placement did not address all of the student's special education needs. (*Id.* at pp. 1157-1158.) The Court of Appeals held that parents were entitled to full reimbursement because the IDEA "does not require that a private school placement provide all services that a disabled student needs in order to permit full reimbursement." (*Id*. at p. 1158.) In reaching this conclusion the Ninth Circuit relied upon a standard set forth by the Second Circuit. The Court concluded that, for a parent to qualify for reimbursement, parents need not show that a private placement furnished every special service necessary to maximize their child's potential. They need only to demonstrate that the placement provided educational instruction specially designed to meet the unique needs of a child with a disability, supported by such services as are

necessary to permit the child to benefit from instruction. (*Id.* at p. 1159 [quoting *Frank G. v. Board of Education* (2d Cir. 2006) 459 F.3d 356, 365 (citations and emphases omitted)].)

Student prevailed on Issues 1, 2a, 2b, 2d, 3, and 4, and is entitled to a remedy for all FAPE violations in the form of parental reimbursement for educationally related expenses. These expenses include tuition at New Haven and Lake Tahoe Preparatory school as well as travel expenses and reimbursement for Dr. Jenkins's assessment. Student did not provide any authority for reimbursement of Parents' educational consultant fees.

Here, Sequoia should have assessed Student in May 2020. Moreover, when Sequoia assessed Student in December 2020, Dr. Miller relied on Dr. Jenkins's psychological assessment for cognitive and academic testing results and did not conduct his own cognitive or academic testing. Therefore, it is equitable to reimburse Parents for the cost of Dr. Jenkins's psychological assessment. The cost of Dr. Jenkins's assessment was $4,200. Parents paid for the assessment using a credit card which incurred a three percent fee. Parents could have paid for the assessment by check which would not have incurred a fee. Therefore, Parents are not entitled to the three percent credit card fee in addition to the $4,200 reimbursement for Dr. Jenkins's psychological assessment.

Sequoia was responsible for Student's placement at a residential treatment center from December 17, 2020, when it offered such a placement as FAPE until Student returned to Woodside High School for the 2021-2022 school year as equitable relief for the FAPE denials in Issues 2a, 2b, 2d, 3, and 4. New Haven was a California certified nonpublic school that addressed Student's needs and provided her with educational

benefit. Student's tuition and board at New Haven from January 19, 2021, through June 5, 2021, was $65,753. Student provided invoices from New Haven as well as canceled checks proving payment. Parents are entitled to $65,753 in reimbursement for New Haven. Student also asked for reimbursement for a $212 advanced placement calculus fee. Student did not provide any information about the necessity of the advanced placement fee. Therefore, Parents are not entitled to reimbursement for the $212 advanced placement fee.

Student's December 17, 2020 IEP offered her placement at a residential treatment center until December 3, 2021. Although Sequoia did not specifically offer Student extended school year services, a residential treatment center placement is a year-round placement, therefore, it is equitable to reimburse Parents for Student's tuition and board during summer 2021. Student attended Lake Tahoe Preparatory school between June 6, 2021, through August 31, 2021. Lake Tahoe Preparatory school was not a California certified nonpublic school, however, Student proved it provided her with educational benefit as she earned academic credit for the classes she took during the 2020-2021 school year. Student alleges her tuition and board at Lake Tahoe Preparatory school was $8,050. Student did not provide an invoice or other documentation from Lake Tahoe Preparatory school. Student provided canceled checks showing Parents paid $8,050 to Lake Tahoe Preparatory school. Parents are entitled to up to $8,050 in reimbursement for Lake Tahoe Preparatory school contingent upon an invoice from Lake Tahoe Preparatory school.

Student requests $2,394 in travel costs for Parents travel to New Haven for a mandatory parents weekend in March 2021 and $189.40 in reimbursement for a one-way plane ticket for a home visit for Student on May 14, 2021. Sequoia would have

been responsible for travel costs associated with Student's placement and visits if Sequoia placed Student at an appropriate residential treatment center. Therefore, reimbursement for Parents' travel costs is equitable.

Parents weekend was held on March 25, 26, and 27, 2021. Student requested $937.07 in reimbursement for lodging accommodations for a rental house from March 24, 2021, to March 28, 2021, for $564.15, and one additional night for $372.92. Student provided an invoice and proof of payment for the rental house, however, did not provide any justification for the additional night. Consequently, Parents are entitled to lodging reimbursement for parents' weekend in the amount of $564.15. Student also requests $343.33 in car rental reimbursement, $90 in parking reimbursement, $423.60 in airfare reimbursement, and $600 in food reimbursement. Student provided an invoice and proof of payment for the rental car from March 24, 2021, through March 28, 2021. Although Parents paid $343.33 for the rental car the invoice is for $343.23, therefore Parents are entitled to $343.23 in reimbursement for the rental car. Student requested $90 in parking reimbursement for long-term parking at the San Francisco airport between March 24, 2021, and March 28, 2021. Student provided an invoice and proof of payment for the parking fee. Student provided invoices and proof of payment for $423.60 in airfare costs to fly from San Francisco to Salt Lake City on March 24, 2021, and to return from Salt Lake City to San Francisco on March 28, 2021. Student requested $600 in food reimbursement alleging $100 per person per day is standard for food allocation. Student did not provide any receipts for meals or food or any authority that $100 per person per day is a standard food allocation. Therefore, Parents are not entitled to the requested $600 in food reimbursement. Parents are entitled to $1,420.98 in travel reimbursement for parents' weekend for lodging, airfare, parking, and the rental car.

Student also requested $189.40 in reimbursement for a one-way plane ticket for a home visit on May 14, 2021. Student provided an invoice and proof of payment for the home visit airfare. Parents are entitled to $189.40 in reimbursement for Student's home visit.

## ORDER

1. Sequoia shall reimburse Parent $4,200 for the cost of Dr. Jenkins's psychological assessment within 45 days of this Decision. No further proof of payment is required as sufficient proof was submitted at hearing.
2. Sequoia shall reimburse Parent $65,753 for the cost of Student's tuition at New Haven residential treatment center within 45 days of this Decision. No further proof of payment is required as sufficient proof was submitted at hearing.
3. Sequoia shall reimburse Parent $8,050 for the cost of Student's tuition at Lake Tahoe Preparatory school. Sequoia shall reimburse Parents within 45 days upon Parents submission of an invoice from Lake Tahoe Preparatory school.
4. Sequoia shall reimburse Parent $1,610.38 for travel costs within 45 days of this Decision. No further proof of payment is required as sufficient proof was submitted at hearing.
5. All of Student's other requests for relief are denied.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Linda Dowd
Administrative Law Judge
Office of Administrative Hearings