

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.

CASE NO. 2023050452

DECISION

JANUARY 25, 2024

On May 8, 2023, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Temecula Valley Unified School District. OAH granted Student's motion to amend the complaint on August 10, 2023, and continued the matter for good cause on August 23, 2023. Administrative Law Judge Cynthia Fritz heard this matter by videoconference on November 14, 15, 16, 17, 20, 21, 28, and 29, 2023.

Attorneys Jodi O. Bynder and Dina C. Kaplan represented Student. Parent attended the hearing each day on Student's behalf. Student did not attend the hearing. Attorneys Cynthia D. Vargas and Jennifer M. Aardema represented Temecula Valley. Special Education Director Breck Hilton attended the hearing on behalf of Temecula Valley and was replaced at times by Assistant Special Education Director Leticia DelMoral.

At the parties' request, OAH continued the matter to December 20, 2023, for closing briefs. The matter was submitted, and the record closed on December 20, 2023.

ISSUES

1. Did Temecula Valley deny Student a free appropriate public education, called FAPE, during the 2021-2022 school year by failing to:
 - a. make a clear offer as to the frequency and delivery of counseling services in the February 28, 2022 amendment individual education program, called IEP;
 - b. consider the continuum of placement options, specifically the need for a residential treatment center, in the February 28, 2022 amendment IEP;
 - c. offer appropriate counseling, mental health, and behavior services and supports in the February 28, 2022 amendment IEP;
 - d. offer an appropriate placement in the February 28, 2022 amendment IEP;
 - e. offer an appropriate placement in the April 7, 2022 amendment IEP, by failing to consider a need for a change of placement;
 - f. offer goals to address behavior, mental health, and social-emotional needs in the May 6, 2022 IEP;
 - g. offer appropriate counseling services in the May 6, 2022 IEP;
 - h. offer additional behavior and mental health supports and services in the May 6, 2022 IEP;

- i. make a clear offer as to the frequency and delivery of counseling services, thus impeding parent's ability to participate in the May 6, 2022 IEP process;
 - j. timely complete the multidisciplinary assessment; and
 - k. assess in all areas of suspected disability, specifically, autism spectrum disorder and a specific learning disability in math, in the May 27, 2022 multidisciplinary assessment report?
- 2. Did Temecula Valley deny Student a FAPE during the 2022-2023 school year by failing to:
 - a. make a clear offer of placement in the August 22, 2022 amendment IEP;
 - b. make a clear offer of counseling services in the August 22, 2022 amendment IEP;
 - c. offer appropriate individual and group counseling services in the August 22, 2022 amendment IEP;
 - d. consider the continuum of placement options, specifically the need for a residential treatment center, in the August 22, 2022 amendment IEP;
 - e. offer an appropriate placement in the August 22, 2022 amendment IEP;
 - f. offer appropriate counseling services in the October 18, 2022 IEP;
 - g. offer an appropriate behavior intervention plan in the October 18, 2022 IEP;
 - h. consider the continuum of placement options in the October 18, 2022 IEP;

- i. offer an appropriate placement in the October 18, 2022 IEP;
- j. consider the recommendations in the October 2022 private neuropsychological report at the October 18, 2022 IEP;
- k. offer appropriate counseling services at the May 2, 2023 IEP; and
- l. consider the continuum of placement options in the May 2, 2023 IEP, specifically the need for a residential treatment center placement; and
- m. offer an appropriate placement at the May 2, 2023 IEP?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, 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 IDEA are to ensure:

- all children with disabilities have available to them a FAPE, that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- 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 FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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.Ed2d 387] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed this matter and bore the burden of proof. 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 thirteen years old and in eighth grade at the time of hearing. Student resided within Temecula Valley's geographic boundaries at all relevant times. Student became eligible for special education under the categories of other health impairment and emotional disturbance in 2019 and 2020, respectively.

Student received diagnoses of attention deficit hyperactivity disorder, called ADHD, generalized anxiety disorder, and dysregulated mood disorder in elementary school and has been prescribed various ADHD and psychotropic medication since that time. In 2022, Student received additional diagnoses of autism spectrum disorder and other specified depressive disorder. Student's issues are analyzed in the chosen order, rather than numerically, to enhance clarity.

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2021-2022 SCHOOL YEAR- SIXTH GRADE

ISSUES 1a-d: DID TEMECULA VALLEY DENY STUDENT A FAPE ARISING FROM THE FEBRUARY 28, 2022 IEP TEAM MEETING AND OFFER?

The main dispute at hearing centered around whether Student should have been placed in a residential treatment center. Student alleges both procedural and substantive FAPE violations beginning February 28, 2022.

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 (2006).) 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 (2007), 300.321 (2006), and 300.501 (2006).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*).)

The IEP is the “centerpiece of the [IDEA’s] education delivery system for disabled children” and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.ED.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 46032, 56345.) An IEP provides 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 nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)(A).)

In third and fourth grade, during the 2018-2019 and 2019-2020 school years, Student attended a charter school outside of the Temecula Valley Unified School District. While there, Student struggled at school with

- peer relationships,
- inappropriate language toward peers,
- impulsivity,
- angry outbursts in class,
- throwing items at students,
- destroying property, x
- aggression, and
- problems with coping skills and work completion.

At home, Parents were separated and divorcing, and Student significantly struggled behaviorally at home. The charter school found him special education eligible under the categories of other health impairment and emotional disturbance.

Student enrolled at Temecula Valley in August 2020 for fifth grade. Student's needs included:

- attention,
- concentration,
- impulse control,
- peer and adult interactions,
- work completion,
- externalizing and internalizing behaviors,
- aggression, and
- anxiety.

Student attended school online in fifth grade due to the COVID-19 pandemic and later that school year attended school in a hybrid model which was partially online and partially in-person. On March 15, 2021, Temecula Valley convened an IEP team meeting to discuss Student's defiant behavior, resistance to homework completion, and self-harm talk during in-person learning.

At the IEP team meeting, Parent explained that Student recently began private outpatient therapy for his anxiety, anger, and expression of self-harm at home. Temecula Valley offered a functional behavioral assessment and discussed wraparound services. Wraparound services are community-based intervention services that emphasize the strengths of the child and family and includes the delivery of coordinated, highly

individualized unconditional services to address their needs. (Welf. & Inst. Code, § 18251, subd. (d).) Parent agreed to both. Despite Student's behavioral issues at school, he regularly attended school and accessed his education.

Student's annual IEP team meeting convened on multiple dates in May 2021. At these team meetings, the IEP team reviewed the functional behavior assessment and offered Student a limited term placement in Temecula Valley's middle school Social Emotional Academic Learning program, called SEAL, for 60 days. The SEAL program is an intensive therapeutic and academic day program located on a Temecula Valley comprehensive school campus in a small classroom environment that serves students who demonstrate emotional, social, and behavioral challenges.

Temecula Valley developed a behavioral support plan based on the functional behavioral assessment that targeted non-compliance and inappropriate language-verbal or nonverbal aggression, and offered

- specialized academic instruction,
- individual counseling services,
- counseling and guidance services,
- wraparound services,
- transportation, and
- extended school year individual therapy services.

It also offered an educational related mental health services assessment, called ERMHS, to determine if Student needed additional services or a different placement, including a residential treatment center placement.

Student started in the SEAL program for sixth grade in August 2021. His class had eight to 10 students, ranging from sixth to eighth grade, with one special education credentialed teacher and two classroom aides. Student received four 30-minute individual therapy sessions during this limited SEAL placement. His Temecula Valley therapist, Angelina Warner, a licensed marriage and family therapist, was located across the hall from the middle school SEAL program so that students could also stop in to see her any time along with their regularly scheduled therapy sessions. Warner also conducted the group therapy sessions through the SEAL program, collected data on Student's social-emotional goals, and collected data for the ERMHS assessment. Student improved behaviorally in the SEAL program, regularly attended school, made progress, and accessed his educational curriculum.

Temecula Valley completed the ERMHS assessment and Warner recommended the SEAL program, specialized academic instruction, individual and group therapy, and wraparound services. The October 13, 2021 IEP team agreed with Warner's recommendations and offered them to Student. Parent consented to the IEP offer.

Student made progress educationally and behaviorally in the SEAL program from the beginning of fifth grade in August 2021 through his first semester in fifth grade to December 2021. He improved in attention, redirection, effort, and emotional regulation. However, as the holiday season approached, Student emotionally withdrew from his family and showed increased defiance and entitlement behaviors at home. At school, some behavioral concerns arose but not to the same extent as at home. However, he had more issues related to peer relations, in particular with a few students in his SEAL classroom.

At Student's January 6, 2022 IEP team meeting, Parent noted that Student's emotional condition had deteriorated at home over the winter break. He had become obsessed with video games which caused increased isolation, lack of sleep, irritability, and anxiousness. He charged hundreds of dollars to Parent's credit card without permission. Student's behavior also declined at school after winter break but not to the same degree as seen at home. Warner established that it is common to see increased behavioral challenges at school by students following an extended school break.

By mid-February 2022, Parent informed Warner of her concerns with Student's aggression toward his two siblings and lack of sleep at home. Parent planned to enter Student into a residential therapeutic stabilization program, called River Stones. This program did not include an educational component. The purpose was to assist with Student's behavior at home.

Temecula Valley convened an IEP on February 28, 2022. This was an amendment IEP to the May 2021 annual IEP, and the first IEP at issue in this matter. Temecula Valley convened the meeting to discuss Student's wraparound services but also discussed his increased mental health needs.

ISSUE 1a: STUDENT FAILED TO PROVE THAT THE COUNSELING OFFERS
IN THE FEBRUARY 28, 2022 IEP WERE UNCLEAR SUCH THAT IT DENIED
STUDENT A FAPE

Student asserts that the group and individual counseling offers in the February 28, 2022 IEP were vague as to when and where the services were to be delivered. Thus, Student maintained it failed to include the specificity required by law.

Temecula Valley argued that the individual and group counseling service offers were clear, and it was not obligated under the IDEA or California law to explicitly list services at a weekly or monthly frequency.

An IEP must include the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7) (2007).) A written IEP document memorializes the FAPE offer “providing notice to both parties as to what services will be provided to the student during the period covered by the IEP.” (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1197.)

In *Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, (*Union*), the Ninth Circuit stated: “The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any.” (*Id.* at p. 1526.) This serves the purpose of providing parents with information sufficient to determine whether to accept the school district’s offer. (*Id.* at p. 1526.) Failure to make a clear written offer is a procedural IDEA violation. (*Id.* at p. 1527.)

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Procedural violations do not automatically require a finding of a FAPE denial. A procedural violation only constitutes a denial of FAPE if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parents' opportunity to participate in the decision-making process regarding provision of a FAPE to the student; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

Student's contention that the unclear counseling offers impeded Parent's opportunity to participate in the IEP decision-making process is unpersuasive. On February 28, 2022, Temecula Valley convened an amendment IEP team meeting to the May 2021 annual IEP team meeting, to discuss Student's wraparound services. Temecula Valley also offered Student 30-minute individual counseling sessions 18 times per year, and 30-minute group counseling sessions 16 times per year, at the February 2022 IEP team meeting. This was the same counseling offer Student received from Temecula Valley at the October 2021 IEP meeting. Student argued these counseling offers were vague as to when and where the services were to be delivered and did not provide the required specificity to give Parent notice of what counseling services Student would receive.

Here, the IEP specifically set forth the location of the services "to occur within the Social Emotional Academic Learning Program." Thus, the counseling offers specifies where the counseling services will take place.

Student failed to submit any law in support of its contention that the yearly sessions did not meet the requisite specificity under the IDEA. However, even if the IEP

counseling offers lacked sufficient clarity as to when the services would occur because they were designated on a yearly basis, such a procedural violation did deprive Parent of participation in the IEP decision-making process.

Student asserts that the unclear counseling offers impeded Parent's opportunity to participate in the decision-making process. This argument fails.

The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b) (2006); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) Among the most important procedural safeguards are those that protect the parents "right to be involved in the development of their child's educational plan." (Amanda J. ex rel. Annette J. v. Clark County Sch. Dist. (9th Cir. 2001) 267 F.3d 877, 882 (Amanda J.)) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (N.L. v. Knox County Schools (6th Cir. 2003) 315 F.3d 688, 693; Fuhrmann, supra, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Parent participated in the IEP development process. She was informed of Student's problems at that time, gave input, and shared her concerns and questions at the IEP team meeting. Student failed to submit any evidence that Parent was at all confused by the counseling offers or did not meaningfully participate at the February 2022 IEP.

Further, Student failed to present any evidence that clarity of the counseling offers impeded Student's right to a FAPE or caused a deprivation of educational

benefits. Accordingly, Student failed to meet his burden of proof that Temecula Valley failed to make a clear offer of counseling services in the February 28, 2022 IEP document, such that it denied Student a FAPE.

ISSUE 1 c: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO OFFER
APPROPRIATE COUNSELING SERVICES IN THE FEBRUARY 28, 2022 IEP

Student contends Student's increasing mental health needs should have obligated Temecula Valley to offer more counseling services at the February 28, 2022 IEP. Temecula Valley asserts that Student's FAPE counseling offers were appropriate to meet Student's unique needs.

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 Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].) California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (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 and may include counseling and behavior services when appropriate.

(20 U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a).) In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) (2006); Ed. Code, § 56341.1, subd. (b)(1).)

A child's educational needs are to be broadly construed to include the child's

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and
- vocational needs. (*Seattle Sch. 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, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. at pp. 56-58.)

Educational benefit is not limited to academic needs, but also includes the social and emotional needs that affect academic progress, school behavior, and socialization.

(*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*).)

Student proved that Temecula Valley denied Student a FAPE by failing to offer him additional individual counseling services at the February 28, 2022 IEP. At the

meeting, Parent shared concerns with hygiene, defiance, an obsession with video games including anger and frustration when he could not play games. Warner described Student's increased mental health issues at school as

- refusal to comply with Chromebook rules,
- having tantrums related to Chromebook use,
- hygiene issues, and
- sleeping on the ground outside of the class and in class due to lack of sleep at home.

Temecula Valley also acknowledged that Student had reached a plateau in wraparound services and the IEP team agreed to discontinue them. Temecula Valley, however, did not increase Student's counseling offer despite his increasing mental health needs and maladaptive behaviors at school.

Although Student's more significant behaviors occurred at home, the parties agree that Student's mental health deteriorated and his behaviors escalated at home and at school toward the end of December 2021 through the February 28, 2022 IEP team meeting. At that time, Student's behaviors should have stabilized had they resulted from winter break as Temecula Valley asserted.

Despite Student's mental health deterioration for over two months, Temecula Valley continued to offer only 30-minute individual counseling sessions, 18 times per year, and 30-minute group counseling sessions, 16 times per year, as it had since the October 2021 IEP. This offer amounted to one to two counseling sessions per month or 30 to 60 minutes of individual counseling per month, and even less group counseling.

Warner opined that this amount was appropriate and focused on the embedded additional on-demand counseling services offered through the SEAL program. Warner estimated that while Student was in the SEAL program in sixth grade, during the 2021-2022 school year, he would come in often for lunch to talk with her and a couple times per month for additional on-demand therapy sessions. Thus, Warner asserted, Student's counseling offers, along with the additional embedded counseling supports in the SEAL program, were appropriate to meet his mental health needs.

Warner's opinion on this matter was unconvincing. Even with the additional embedded on-demand therapy sessions and therapeutic supports, regular talks with Warner, and scheduled individual and group therapy sessions, Student's mental health needs increased by the end of February 2022.

Temecula Valley should have offered Student more individual counseling services. Accordingly, Student proved that Temecula Valley failed to offer appropriate counseling services at the February 2022 IEP team meeting.

ISSUE 1b: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY DENIED
STUDENT A FAPE BY FAILING TO CONSIDER A RESIDENTIAL TREATMENT
CENTER PLACEMENT AT THE FEBRUARY 28, 2022 IEP TEAM MEETING

Student contends that the February 28, 2022 IEP team members failed to consider residential treatment placement. Temecula Valley maintains that it did consider the continuum of placement options but did not believe a residential treatment center was appropriate for Student, and thus there was no reason to consider that option.

A school district must make available a continuum of placement options. to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a) (2017); Ed. Code, § 56360.) In California, this includes, from least restrictive to most restrictive: regular education programs; resource specialist programs; related services; special classes; nonpublic, nonsectarian school services; and other listed settings; to instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115 (2017); Ed. Code, § 56361.)

The continuum of placement options is to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment appropriate for them. (71 Fed. Reg. 46,586-46,587 (Aug. 14, 2006).) A school district is only required to consider those placements on the continuum that may be appropriate for a particular child. There is no requirement that the IEP team members consider and discuss all placement options. (L.S. v. Newark Unified Sch. Dist. (N.D.Cal., May 22, 2006, No. C 0503241 JSW) 2006 WL 1390661, pp. 5-6 [nonpub. opn.]; Katherine G. v. Kentfield Sch. Dist. (N.D.Cal. 2003) 261. F.Supp.2d 1159, 1189-1190.)

Student failed to prove that Student was denied a FAPE because Temecula Valley failed to consider a residential treatment center placement at the February 28, 2022 IEP team meeting. Student asserts that the IEP team should have discussed and considered a residential treatment center placement due to his increasing mental health needs. Student's argument fails.

Temecula Valley's IEP team members determined that Student's current placement was appropriate. Although Temecula Valley knew Parent planned to place Student in River Stones therapeutic stabilization program, it did not believe a residential

treatment program was appropriate for Student as an educational placement because Student could continue to make progress in the SEAL program, a less restrictive environment, despite his mental health needs.

Although at hearing, Temecula Valley witnesses did not agree that Student needed a residential treatment program for educational purposes at that time, the IEP team should have considered it at the February 2022 IEP team meeting, especially given that Parent was removing Student from school and his mental health had not stabilized since late December 2021 in the intensive SEAL therapeutic day program. This information was enough for Temecula Valley to consider if a residential treatment program was appropriate placement in the least restrictive environment.

The failure to consider a residential treatment center placement was a procedural violation. Here, the violation did not deny Student a FAPE because Student failed to prove that a residential treatment center was appropriate for Student as described below. Accordingly, Student failed to meet his burden in proving that Student was denied a FAPE because Temecula Valley failed to consider a residential treatment facility at the February 28, 2022 IEP team meeting.

ISSUE 1d: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY FAILED
TO OFFER APPROPRIATE PLACEMENT IN THE FEBRUARY 28, 2022 IEP

Student contends that Temecula Valley failed to offer Student appropriate placement at the February 28, 2022 IEP team meeting because he needed a higher level of care such as residential treatment. Student also maintains that failing to meet two of his goals by February 2022, his increasing mental health needs, and Parent's placing him

in a therapeutic stabilization program, demonstrated he required a placement option with a higher level of therapeutic care. Temecula Valley argues the Temecula Valley SEAL program was appropriate.

Student failed to prove a higher level of care than the SEAL program was necessary in February 2022. A special education student's placement is that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).) Both federal and state law required Temecula Valley to provide Student special education in the least restrictive environment appropriate to meet his needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2)(i) (2006) ; Ed. Code, § 56040.1.) This means that Temecula Valley must educate a special needs pupil with nondisabled peers "to the maximum extent appropriate," and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii) (2006); Ed. Code, § 56040.1.)

The Ninth Circuit Court of Appeals, in *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398 (*Rachel H.*), set forth standards to determine whether a general education classroom is the least restrictive environment for a child with a disability. The court adopted a balancing test that required the consideration of four factors:

1. the educational benefits of placement full time in a regular class;
2. the non-academic benefits of such placement;

3. the effect the student would have on the teacher and children in the regular class; and
4. the costs of mainstreaming the student. (*Id.* at p. 1403.)

If the IEP team determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate considering the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050; *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.* (9th Cir. 2009) 306 Fed.Appx. 397, 400.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way Sch. Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7 (*M.L.*))

Under *Rachel H.*, the analysis of whether an offer of placement is appropriate begins with evaluating whether a general education setting is appropriate for Student. There was no dispute in this case that a general education setting was not the appropriate placement for Student, and neither party argued for such a placement. The primary issue is whether placement at Temecula Valley's middle school SEAL program would provide sufficient educational benefits to Student, or if he required a more restrictive placement such as a full-time residential treatment center to accomplish that goal. Accordingly, a detailed analysis of each of the *Rachel H.* factors is not necessary to determine that full time general education was not an appropriate placement.

Residential placement is, by its nature, considerably more restrictive than day school. (See *Kerkam by Kerkam v. Superintendent, D.C. Public Schools.* (D.C. Cir. 1991) 931 F.2d 84, 87 (*Kerkam*); *G.D. v. Westmoreland Sch. Dist.* (1st Cir.1991) 930 F.2d 942, 948 (*G.D.*); *Carlisle Area Sch. v. Scott P. By and Through Bess P.* (3d Cir. 1995) 62 F.3d

520, 534, amended (Oct. 24, 1995) (*Carlisle*.) The IDEA does not define a therapeutic placement; however, both day schools and residential facilities can qualify as therapeutic placements. By their very nature, therapeutic placements require a student's removal from the general education environment. As a result, a therapeutic placement is one of the most restrictive placements on the continuum. (34 C.F.R. § 300.115 (2017).) Given their restrictive nature, removal of a student with disabilities to a residential setting complies with the least restrictive environment mandate in only extremely limited situations for students with severe disabilities who are unable to receive a FAPE in a less restrictive environment. (*Carlisle, supra*, 62 F.3d at p. 523.)

A 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 District v. T.A.* (9th Cir. 2011) 638 F.3d 1234, 1238-39 (*Forest Grove*). If "the placement is a response to medical, social, or emotional problems ... quite apart from the learning process," then it cannot be considered necessary under the IDEA. (*Id.*, *Ashland Sch. Dist. v. Parents of Student R.J.* (9th Cir.2009) 588 F.3d 1004, 1009.)

The IDEA provides that a student requires placement in a residential treatment center if such placement is necessary to provide the student with special education and related services. (34 C.F.R. § 300.104 (2006); See *Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635, 643 (*Clovis*).) In *G.R., etc. v. Del Mar Union Sch. Dist.*, (S.D. Cal., Apr. 22, 2020, No. 319CV00132AJBMSB) 2020 WL 1939020 (*G.R.*), the court discussed the law regarding when a residential placement is necessary.

"The Ninth Circuit has identified three possible tests for determining when to impose responsibility for residential placements on the special

education system: (1) where the placement is 'supportive' of the pupil's education; (2) where medical, social, or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement is primarily to aid the student to benefit from special education.' (*San Diego*, supra, 93 F.3d at p. 1468.) Thus, the analysis for determining whether [a residential treatment center] is appropriate ultimately centers on whether the placement is necessary for educational purposes." (*G.R.*, supra, 2020 WL 1939020, at *5.)

In another recent case, *N.G. v. Placentia Yorba-Linda School Dist.* (9th Cir. 2020) 807 Fed.Appx. 648, the Ninth Circuit also applied the standard of whether placement in a residential treatment center was necessary for educational purposes. The Ninth Circuit upheld the school district's denial of a student's request for placement in a full-time residential treatment program. Student's parents wanted placement in the program because the behavioral progress she had made at school in controlling her aggressive and self-injurious behaviors was not reflected at home. At home, Student's self-injurious and aggressive behavior continued and negatively affected her twin sister, who also had significant disabilities. Student had been making educational and behavioral progress at school before parents' unilateral placement at the residential treatment center. The court affirmed the ALJ's decision that the school district offered a FAPE, that Student did not require a residential placement for educational purposes, and there was no relevant time when a residential placement of Student was necessary to provide special education and related services. (*Ibid.*)

Here, Student failed to prove that Temecula Valley failed to offer appropriate placement in the least restrictive environment. Parent sent Student to River Stones, a therapeutic medical stabilization program that does not have an educational

component, for behavior Student exhibited at home which were severe and unmanageable for Parent. The maladaptive behaviors and mental health needs Student exhibited at school were far less severe and manageable by Temecula Valley staff in the SEAL program. Temecula Valley was not required to remedy non-learning related symptoms under the IDEA. (*Forest Grove, supra*, 638 F.3d at p. 1238-39.)

Temecula Valley witnesses persuasively established that Student's behaviors were less severe at school and could be managed in the SEAL program, despite struggling emotionally and behaviorally, and Student continued to receive educational benefit at school. At the time of the February 2022 IEP, Student had passed all his classes the previous semester and no evidence was presented that he was declining academically at that time or any other time. Student was attending school regularly, and despite struggling emotionally, continued to make progress on his goals at that time, including his social-emotional goals.

Further, although Student argued in this closing brief that because he failed to meet two of his social-emotional goals, that he required a higher therapeutic placement, this argument was unpersuasive. There is no one test for measuring the adequacy of educational benefits conferred under an IEP. (Rowley, *supra*, 458 U.S. at pp. 202-203 fn. 25.) A student may derive educational benefit under Rowley if some of goals and objectives are not fully met, or if a student makes no progress toward some of them, as long as the student makes progress toward others. (Walczak v. Florida Union Free Sch. Dist. (2d Cir. 1998) 142 F.3d 119; E.S. v. Independent Sch. Dist. No. 196 (8th Cir. 1998) 135 F.3d 566, 569; El Paso Indep. School Dist. v. Robert W. (W.D.Tex. 1995) 898 F.Supp. 442,449-450.)

At that time, Student derived educational benefit from the SEAL program which is a lesser restrictive environment than a residential placement. Student failed to prove by a preponderance of the evidence that Temecula Valley failed to offer an appropriate placement at the February 2022 IEP.

ISSUES 1e: DID TEMECULA VALLEY DENY STUDENT A FAPE ARISING FROM THE APRIL 7, 2022 IEP TEAM MEETING BY FAILING TO OFFER APPROPRIATE PLACEMENT?

Student contends that Temecula Valley should have considered a need for a change of placement at the April 7, 2022 IEP team meeting because Student was missing school while at River Stones and his lack of attendance at school affected his educational progress and should have triggered a change in placement, specifically, a residential treatment program. Temecula Valley disagrees.

Student failed to prove that Temecula Valley denied Student a FAPE by failing to offer appropriate placement at the April 7, 2022 IEP team meeting. An IEP team "shall meet" whenever "[t]he pupil demonstrates a lack of anticipated progress." (Ed. Code, § 56343, subd. (b).) The IEP team must revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate, and to address parent concerns. (20 U.S.C. § 1414 d)(4)(A)(ii)(I); 34 C.F.R. § 300.324(b). (2017).)

After Student was unilaterally placed in River Stones, Temecula Valley offered an April 7, 2022 IEP amendment. This amendment developed without an IEP team meeting. No issue was raised, nor decision reached regarding the procedural

appropriateness of the amendment. The amendment, however, offered Student extended school year services because he may have suffered some regression due to his attendance at River Stones.

Student cites *L.J. v. Pittsburg v. Unified Sch. Dist.* (9th Cir. 2017) 850 F.3d 996 (*L.J.*) for the proposition that if a parent unilaterally places a student in a short-term residential treatment center and it prevents student from attending school, it automatically demonstrates Student's mental health needs affected his educational progress at school. Although *L.J.* did not make that determination, it also is distinguishable. The court in *L.J.* did not determine that a lack of attendance from a unilateral placement demonstrated an effect on educational performance at school. Instead, the court addressed the issue of a student who had three hospitalizations for suicide attempts and whether that particular student had demonstrated a need for any special education services to address his needs arising from his medical condition. (*Ibid.*)

In *L.J.*, the student had been diagnosed with bipolar disorder, oppositional defiant disorder, and ADHD. His physician had prescribed a cocktail of serious medications for these conditions. (*Id.* at p. 999.) The student continually had needs associated with his medication and treatment. The student in *L.J.* relied on psychotropic medications to be able to attend school. His ability to function declined when he was not medicated or when the medication was ineffective. Staff were concerned that his medications were not being managed properly. (*Id.* at p. 1007.)

Without assessing the student for possible medical side effects and complications of treatment that could affect school functioning, the district in *L.J.* provided a behavior support plan and mental health services. With the assistance of medication and specially

designed instruction, the student had periods of temporary behavioral and academic gain. However, the student frequently acted out at school, and continued to have needs associated with his medication regimen. He threatened and attempted to kill himself three times, and was hospitalized three times, missing school. The court found it “hard to imagine how an emotional disturbance so severe that it resulted in repeated suicide attempts would not interfere with school performance,” and found that the student’s disabilities interfered with his education and required special education services. (Id. at p. 1006.)

The court also found that the district should have assessed the student’s health, and the effects of his medications, to consider alternatives to the services it was providing the student. The court found that the district’s failure to conduct a health assessment effectively made it impossible for the district to address the student’s needs. (Id. at p. 1008.)

Here, unlike in *L.J.*, Student did not attempt to commit suicide at any time. He regularly attended school while at the SEAL program. He received passing grades, made progress on his goals, including social-emotional goals, and there were no concerns about his medical regimen. The evidence established that Student’s lack of attendance in his unilateral placement was due to home issues. Temecula Valley addressed any possible regressing resulting from attendance issues by offering added extended school year services.

Student had made educational progress while in the SEAL program through the April 2022 IEP team meeting. Temecula Valley believed that Student’s stay at River Stones was short-term, and he would be returning to Temecula Valley. Parent informed Temecula Valley that River Stones believed Student was autistic. Temecula Valley

agreed to assess him for autism. There was nothing shared with Temecula Valley by Parent or River Stones that Student's mental health or behavioral needs increased at River Stones such that the SEAL program was no longer an appropriate placement.

Student failed to demonstrate through any documentary or testimonial evidence that Temecula Valley's SEAL program was not the appropriate placement for Student at that time and that it should have changed his placement. Student failed to prove by a preponderance of the evidence that Temecula Valley failed to offer an appropriate placement in the April 7, 2022 amendment IEP, by failing to consider a need for a change of placement.

ISSUE 1f-k: DID TEMECULA VALLEY DENY STUDENT A FAPE ARISING FROM THE MAY 6, 2022 IEP TEAM MEETING AND OFFER?

Upon Student's return from River Stones on May 12, 2022, at the end of the 2021-2022 school year, Student's behavior improved regarding his obsession with computers and sleeping issues at home. He also was able to stay awake in school. Student continued to exhibit behaviors with non-compliance, peer relations, and entitlement issues. He continued to have significant peer problems with a few of his classmates. He received passing grades during his last semester, but they were modified.

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ISSUE NO. 1f: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY
FAILED TO OFFER APPROPRIATE BEHAVIOR, MENTAL HEALTH, AND
SOCIAL-EMOTIONAL GOALS IN THE MAY 6, 2022 IEP

Student asserts that Temecula Valley failed to offer appropriate goals to address Student's behavior, mental health, and social-emotional needs at the May 6, 2022 IEP team meeting. Temecula Valley argues that Student's goals addressed his individual and unique needs and were appropriate.

The IEP document for each disabled child must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (2007).) It must also contain a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability; how progress toward meeting annual goals will be measured, and when the periodic progress reports will be provided. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (2007); Ed. Code, § 56345, subd. (a)(2).)

The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) The IDEA requires goals to target a student's needs, but the IDEA does not require an IEP to contain every goal from which a student might benefit. (*Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125, 1134-1135 (9th Cir. 2021).) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the

student needs only accommodations and modifications. (Fed. Regs., Appendix A, Part 300 – Assistance for the Education for Children with Disabilities (1999) discussing language also contained in the 2004 reauthorization of the IDEAS at 20 U.S.C.

§ 1414(d)(1)(A)(i)(II).)

Student failed to prove by a preponderance of the evidence that the May 2022 IEPs did not offer goals that met Student's behavior, mental health, and social-emotional needs. Student's annual review commenced on May 6, 2022, and continued to May 26, 2022. Together these meetings will be referred to as the May 2022 IEPs. During the May 2022 IEPs, the team discussed Student's present levels of performance and progress on annual IEP goals, his strengths and weaknesses, and Parent's concerns. Each IEP team member responsible for updating his present levels of performance was familiar with Student, having taught or provided services to him.

Regarding his social-emotional and behavior needs, Student struggled with peer interactions and perceived peers were talking badly about him or making fun of him, then responded by cursing, making derogatory comments, racial slurs, or flipping them off. He was too anxious to participate in lunch and breaks at times. He tended to stay around the SEAL program classrooms instead of joining the general education population students. Student also would become verbally aggressive toward teachers at times when he did not get what he wanted. Student had difficulty using the coping strategies learned through the SEAL program and his therapy sessions. He required a small, structured classroom.

Student had five previous goals that Temecula Valley drafted in May 2021 for

- self-regulation,
- work completion,

- coping strategies,
- increasing peer interaction, and
- self-esteem.

Although Student did not make as much progress as expected in some areas because of his absence while at River Stones, the district IEP team members determined through their current data that Student met one goal, coping strategies, and partially met the remaining four. Student made progress in his prior social-emotional and behavior goals up to May 2022.

In May 2022, the IEP team determined that Student had needs in academics, social-emotional, and behaviors. Temecula Valley updated Student's goals. In pertinent part, it developed a task completion goal and three social-emotional/behavior goals in emotional regulation, accepting decisions of authority, and positive peer relations.

Student complained the new social-emotional/behavior goals continued to address the same behaviors as before. However, Warner, with substantial experience serving disabled children, developed these new social-emotional/behavior goals based on her counseling sessions and interactions with Student during the 2021-2022 school year, including her collection of data related to Student's progress on goals while in the SEAL program. Warner was knowledgeable about Student's needs and established that the goals were appropriate and measurable. Warner developed the goals based on Student's unique needs at that time.

The new emotional regulation goal, targeted Student's verbal, and physical aggression observed in the SEAL program. The baseline identified Student's present

levels of functioning, including emotional dysregulation like cursing, racial comments, and profanity and two incidents of physical aggression in January and February 2022. The goal sought to reduce verbal and physical aggression.

The social-emotional behavior goal, accepting decision of authority, targeted Student's

- arguing,
- pouting,
- becoming angry,
- non-compliance,
- disrupting class, and
- being demanding.

The baseline identified his present levels of functioning regarding struggling to follow directions and accepting decisions by staff and showed that his arguing, cursing, and non-compliance averaged 74 times per month in January and February 2022. The goal sought to reduce his argumentative behaviors.

The peer interaction goal targeted Student's negative peer reactions. The baseline identified his present levels of functioning while at the SEAL program, including his sadness over believing he had no friends along with 22 incidents of negative peer reactions in January and February 2022. The goal targeted Student's bullying, name calling, profanity, and flipping off peers. Each of these goals included the staff responsible for helping Student achieve the goal.

Warner testified in support of the social-emotional/behavior goals. Warner provided Student services in the SEAL program and observed him at least weekly. Her

expertise was evident in the competent formulation of goals based on data collection, observation, and experience with Student. Each goal was clear, well-defined, measurable, and appropriately ambitious. Warner's testimony established the appropriateness of these goals, considering Student's unique needs. Additionally, there was no evidence to demonstrate the necessity for alternative goals to provide Student a FAPE. Warner was a knowledgeable and experienced in this area, and a credible witness. Her testimony regarding the goals for the May 2022 IEPs was given substantial weight.

Dr. Lisa Ware, private neuropsychologist, criticized two of the three social-emotional goals as insufficient because they failed to include an application of the skills needed to utilize them. Ware opined that the goal regarding accepting decisions of authority neither showed how to apply the skill nor did it explain to Student what to do. Ware criticized the increasing positive peer relations goal for the same reason. Additionally, Ware asserted that she would have written all these social-emotional/behavior goals differently. Based on her critique, she opined that the goals were unmeasurable and unclear.

Through cross-examination, however, Ware conceded that the goals were measurable, and goals can be written differently and still be appropriate. This undermined her initial criticism of the goals during her direct examination. Further, Ware's criticisms failed to identify any substantive flaws. A reading of the goals demonstrated their clarity. Ware further made no recommendations for additional goals. Ware had never worked in a kindergarten through 12 educational setting and no evidence was presented that she had any experience drafting or measuring progress on goals. Her lack of experience coupled with her retracted opinion on cross-examination made her testimony in this area unpersuasive.

Student argued in his closing brief that a comparison of the data collected by Warner from her ERMHS report in October 2021 versus school psychologist Taylor Morris' data in the October 2022 triennial assessment, discussed in further details below, showed no improvement or worsening behaviors, proving Student failed to make progress on his goals. Thus, Student argued different goals should have been formulated. Even if correct, Morris' data was not known to the IEP team in May 2022 because her assessments and report were not completed until October 2022, months after this IEP offer.

Student also relied on information Student's teacher expressed in June 2022 showing Student's emotional decline. However, this information was also not known at the time of the May 2022 IEP offer to Student.

Parent actively participated at the May 2022 IEPs and the goal-setting process including reviewing the present levels of performance, baselines, and goals. Parent demonstrated an understanding of the goals and comprehended how these goals would be implemented and evaluated. Parent did not express concerns with the goals.

No persuasive evidence demonstrated the goals were inadequate or that Student was denied a FAPE based upon the goals. Accordingly, Student failed to prove by a preponderance of the evidence that Temecula Valley failed to offer goals to address behavior, mental health, and social-emotional needs in the May 2022 IEPs.

ISSUES 1g AND h: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO OFFER APPROPRIATE COUNSELING SERVICES IN THE MAY 6, 2022 IEP

Student contends that Temecula Valley denied him a FAPE because it failed to offer appropriate counseling services and additional behavior and mental health support

and services at the May 6, 2022 IEP team meeting. Temecula Valley maintains that the counseling, behavior, and mental health support and services offers were appropriate.

Student met his burden of proof that additional counseling services were needed to provide Student a FAPE. Student continued to attend River Stones through May 12, 2022. At the May 2022 IEP team meetings, Warner opined that Student benefitted more from individual therapy and that he continued to struggle with emotional regulation, accepting decisions of authority, and peer interactions. She recommended the continuation of individual and group therapy services, and Temecula Valley increased Student's counseling offers to 22 individual counseling sessions per year, 30 minutes each, and 18 group counseling sessions per year, also 30 minutes each. This amounted to a little over 60 minutes of individual therapy per month and 30-60 minutes of group therapy per month.

Warner opined that the offer of counseling services was appropriate. Cheryl Goldberg, Student's clinical social worker and senior clinical therapist at River Stones disagreed. Goldberg treated Student from March 1, 2022, through May 12, 2022. She persuasively testified that Student needed more than 30 minutes per week of individual counseling to meet his needs based on her knowledge of Student at that time.

Goldberg established that additional individual therapy services should have been offered to Student, more than 30 minutes per week, because Temecula Valley's counseling offers along with the embedded counseling services and supports through the SEAL program were no longer effective based on Student's deteriorating mental health earlier that year. Student needed more than 30 minutes weekly of individual counseling services which Temecula Valley failed to offer. Student received more than

30 minutes of counseling per week while at River Stones and she opined that he made emotional and behavioral progress with additional therapy services. Goldberg's testimony was given great weight regarding this issue.

Student needed more than 30 minutes of individual counseling services per week to address his school-related mental health needs. Goldberg spoke with Warner about Student's stay at River Stones, communicated that Student continued to need more intense counseling services. Temecula Valley did not offer enough counseling to Student at school. Accordingly, Student proved by a preponderance of the evidence that Temecula Valley denied Student a FAPE for failing to offer appropriate counseling services at the May 2022 IEP team meetings.

In addition to increased counseling services, Student asserted that Temecula Valley should have also added other unspecified additional supports and services at the May 2022 IEP team meetings due to Student's mental health needs. Student failed to present any evidence in support of this contention. Thus, Student failed to prove that Temecula Valley denied Student a FAPE for failing to offer additional behavior and mental health supports and services in the May 6, 2022 IEP, beyond additional counseling services.

ISSUE 1i: STUDENT FAILED TO PROVE THAT THE COUNSELING OFFERS IN THE MAY 6, 2022 IEP DOCUMENT WERE UNCLEAR SUCH THAT IT DENIED STUDENT A FAPE

Student asserts Temecula Valley designated the group counseling offer on one IEP page as yearly and on another IEP page as weekly, making it unclear. Further, Student maintains Temecula Valley's designation of group and individual counseling

services on a yearly basis was unclear as to frequency. Thus, Student argues, the counseling offers fail to provide the requisite legal specificity to Parent to allow her to participate in the IEP decision-making process. Temecula Valley disagrees and argues that the counseling offers were specific and clear.

Student failed to prove that Temecula Valley's May 6, 2022 counseling offers denied Student a FAPE. On the services page of the May 6, 2022 IEP document, Temecula Valley offered 22 individual counseling sessions, 30 minutes each, yearly, from May 6, 2022, through May 5, 2023, through the SEAL program. The FAPE offer for individual counseling services in the IEP notes confirms the same offer.

For group counseling, the IEP notes state the group counseling offer is 18 sessions at 30 minutes each on a yearly basis, which is inconsistent with the group therapy offer on the services page which states group therapy is 18 sessions, 30 minutes each on a weekly basis. Warner confirmed the group therapy offer on the services page was a typographical error and should be on a yearly basis.

This typographical error, even if a procedural violation, did not impede Parent's ability to participate in the IEP decision-making process. Mere technical violations will not render an IEP invalid. (*Amanda J.*, *supra*, 267 F.3d at p. 892).)

Parent attended the May 2022 IEPs and was actively involved by providing input, concerns, and questions. Student failed to present any evidence that Parent was confused over the typographical error in the group counseling offer. Parent had participated in previous IEP team meetings with Temecula Valley where the counseling services were designated on a yearly basis. No evidence was presented that Parent was confused by the error at the May 2022 IEP team meeting, after the meetings, and

through the time of the hearing. For these reasons, Student failed to meet his burden that this procedural error impeded Parent's ability to participate in the IEP decision-making process.

Further, Student failed to provide any evidence that an unclear counseling offer caused a deprivation of educational benefits. Student also failed to provide any legal authority that yearly services per se lack specificity and are unclear. Accordingly, Student failed to meet his burden of proof that Temecula Valley failed to make a clear counseling offer in the May 2022 IEP documents that caused a FAPE denial.

2022 TRIENNIAL ASSESSMENTS

ISSUE 1j: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO TIMELY COMPLETE STUDENT'S MULTIDISCIPLINARY REPORT

Student asserts Temecula Valley was required to complete Student's triennial assessments by May 17, 2022, and denied Student a FAPE when it failed to timely complete them. Temecula Valley maintains that Parent agreed to waive the triennial assessment timeline through September 7, 2022.

A reassessment must occur not more frequently than once a year, unless the parent and the district agree otherwise, and must occur at least once every three years, unless the parent and the school district agree, in writing, that a reassessment is unnecessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b) (2006); Ed. Code, § 56381, subd. (a)(2).) A reassessment performed every three years is commonly referred to as a triennial assessment.

Reassessments require parental consent, or, in the absence of parental consent, an order following a due process hearing. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain parental consent the school district must provide proper notice to the student and parent. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3), (c)(1); 34 C.F.R. § 300.304(a) (2006); Ed. Code, § 56321, subd. (a).) The district must give the parent at least 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).) Special education assessments must be completed, and an IEP team meeting held, within 60 days of receiving consent, excluding school vacations more than five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c) (2007); Ed. Code, §§ 56043, subd. (f)(1), 56302.1, subd. (a), & 56344, subd. (a).)

Student's prior educational agency had assessed him for special education eligibility and found him eligible on May 17, 2019. Thus, Student's triennial assessment was due on May 17, 2022. An assessment plan should have been given to Parent back in March 2022, to complete the triennial assessment by May 17, 2022. However, Temecula Valley did not present an assessment plan to Parent until April 13, 2022. Parent consented to the assessment plan on April 26, 2022.

At the May 6, 2022 IEP team meeting, Temecula Valley and Parent agreed to change the triennial assessment due date to September 7, 2022. This agreement is memorialized in the IEP meeting notes, and Parent consented to this IEP in its entirety. No evidence was presented at hearing that contradicted this agreement between the parties. Based upon this agreement, Student's assessments were due no later than September 7, 2022.

Despite this agreement, Temecula Valley failed to timely complete Student's assessments and multidisciplinary assessment report until October 18, 2022. Accordingly, Student proved Temecula Valley committed a procedural violation by failing to timely complete the triennial assessment and report.

This six-week delay impeded Parent's ability to participate in the IEP decision-making process by depriving Parent of important assessment information earlier. "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Amanda J.*, *supra*, 267 F.3d at p. 892.) This was a critical time for Student. Parent had unilaterally placed him in an out-of-state wilderness program in July 2022 and requested residential treatment center placement in August 2022. Had Parent had this information earlier, other educational decisions could have been considered.

Student also proved this procedural violation denied him a FAPE because it resulted in a loss of an educational benefit. "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative educational possibilities for the student would have been better considered." (*Doug. C. v. Hawaii Department of Education* (9th Cir. 2013) 720 F.3d 1038, 1047 (*Doug C.*), quoting concurring opinion of Judge Gould in *M.L.*, *supra*, 394 F.3d at p. 657)

Had Temecula Valley timely completed the assessments six weeks earlier, the IEP team could have discussed the results six week earlier and determined whether additional or alternative programming was warranted. However, as discussed below, Student continued to exhibit increasing needs in behavior and mental health without any changes to his IEP to address it. Student proved Temecula Valley denied him a FAPE by failing to timely complete the multidisciplinary assessment.

ISSUE 1k: STUDENT FAILED TO PROVE A FAPE VIOLATION FOR FAILURE
TO ASSESS IN AUTISM, BUT PROVED A FAPE VIOLATION FOR TEMECULA
VALLEY'S FAILURE TO ASSESS FOR A SPECIFIC LEARNING DISABILITY

Student asserts that Temecula Valley failed to assess Student in autism and a specific learning disability for his triennial assessment. Temecula Valley maintains that it appropriately assessed Student for his triennial assessment in autism and specific learning disability.

A local educational agency must assess a special education student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4) (2006); Ed. Code, § 56320, subd. (f).) An assessment must be sufficiently comprehensive to identify all the student's special education and related service needs, whether commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6) (2006).)

A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O., supra*, 822 F.3d at pp. 1119-1121.) That 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. A school district's failure to assess in all areas of suspected disability is a procedural violation. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033. (*Park*).)

AUTISM

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three,

that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (34 C.F.R. § 300.8(c)(1)(i) (2017); Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in title 5 California Code of Regulations section 3030, subdivision (b)(4). (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1)(A); see also 34 C.F.R. § 300.8(c)(1)(ii) (2017).)

When Temecula Valley began its triennial review assessment process in May 2022, it was aware that autism was an area of suspected disability. Parent told Temecula Valley in April 2022 that River Stones suspected that Student had autism. In response to Parent's concern, Temecula Valley stated in the April 13, 2022 assessment plan that it would assess Student for autism. Because autism was a known area of suspected disability, it had an obligation to assess in that area for Student's triennial assessment.

The assessor, school psychologist Morris completed Student's autism testing in fall 2022 and reported her findings in the October 18, 2022 multidisciplinary report. She opined that Student displayed similar and many characteristics to youth on the autism spectrum, and Student appeared to meet eligibility criteria to receive special education in the category of autism spectrum disorder. Thus, Temecula Valley assessed Student in autism.

SPECIFIC LEARNING DISABILITY

In California, a specific learning disability is one of 13 categories under which a student may demonstrate a degree of impairment requiring special education. (Cal. Code Regs., tit. 5, § 3030, subds. (a), (b)(1)-(13).) A specific learning disability is defined as a disorder in one or more of the basic psychological processes involved in understanding or using written or spoken language, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. (20 U.S.C. § 1401 (30)(A); 34 C.F.R. § 300.8(c)(1) (2017); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) The basic psychological processes include

- attention,
- visual processing,
- auditory processing,
- phonological processing,
- sensory-motor skills,
- cognitive abilities including association,
- conceptualization, and
- expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Specific learning disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage. (20 U.S.C. § 1401(30)(C); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

With respect to assessments for specific learning disability, a school district may use any of three specified methods of assessment. (34 C.F.R. §§ 300.307 (2006) and

300.309 (2017); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) & (C).) The assessment must include an observation of the student in the student's learning environment to document the student's academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310 (2006); Ed. Code, § 56341, subd. (c).)

In California, an assessment for a specific learning disability requires the use of at least one of the three methods, but determining whether a student has a specific learning disability may not be solely based on any of the methods. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) and (C).) The severe discrepancy, response to intervention, and pattern of strengths and weaknesses methodologies are each considered a single measure or assessment, and just one component of an overall comprehensive evaluation of a child suspected of having a specific learning disability. (United States Department of Education Office of Special Education Programs, *Letter to Prifitera*, (OSEP, March 1, 2007).)

Finally, to rule out lack of appropriate instruction in reading or math as the cause of any underachievement, the assessment must consider data demonstrating that before, or as a part of, the referral process, the student was provided appropriate instruction in a regular education setting, delivered by qualified personnel. (34 C.F.R. § 300.309(b) (2017); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C)(4).) The assessment must also find data-based documentation of repeated assessments of the student's achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the parent. (Ibid.)

When Temecula Valley began its triennial review assessment process in May 2022, it was aware that Student had needs in math and that Student may have a specific learning disability. Temecula Valley provided a math goal, specialized academic

instruction, and accommodations to Student to assist with this need in the May 2022 IEP offer to Student. Math was a documented and known area of need for Student by Temecula Valley, and his math struggles increased since attending Temecula Valley. His informal assessments documented in his May 2022 IEPs showed he scored between the second and fifth grade in different math areas. Thus, Temecula Valley had an obligation to test Student for a specific learning disability for his triennial IEP.

Temecula Valley began Student's assessments for specific learning disability but failed to complete his academic achievement scores, by the date of the report, October 18, 2022, and to date, it is unclear if Temecula Valley ever completed them. This is evidenced by Morris' testimony and corroborated in the multidisciplinary report. Temecula Valley attempted but failed to complete the severe discrepancy model method and failed to present any further evidence that any other methods were used to determine if Student had a specific learning disability. Temecula Valley also failed to observe Student in his learning environment as legally required to determine specific learning disability eligibility. Student proved Temecula Valley failed to assess Student for a specific learning disability.

This procedural failure denied Student a FAPE. It denied Parent the ability to participate in the decision-making process without current academic data at the October 18, 2022 IEP team meeting, which occurred in the 2022-2023 school year. It further denied Student an educational benefit because without accurate academic testing data, Temecula Valley could not accurately identify Student's present levels of performance and current needs in academics and consider alternative or additional goals, services, and supports to appropriately address any academic deficits. Accordingly, Student proved that Temecula Valley denied Student a FAPE by failing to assess in specific learning disability in the May 2022 triennial assessment and multidisciplinary report.

2022-2023 SCHOOL YEAR-SIXTH GRADE

ISSUE 2a-e: DID TEMECULA VALLEY DENY STUDENT A FAPE ARISING FROM THE AUGUST 22, 2022 IEP TEAM MEETING AND FAPE OFFER?

Student participated in Temecula Valley's extended school year from June 13, 2022, through July 8, 2022. While in the extended school year program, Student received two 30-minute sessions of individual counseling over four weeks and no group counseling services. During extended school year, Student's peer relations deteriorated in the middle school SEAL program as he continued to have significant problems with at least one peer in the middle school program daily, with verbal aggression, negative comments, and profanity directed at the other student. Student preferred to spend time in the extended school year high school program which was across the hall, and his teacher allowed him to participate in the high school program instead of the middle school program due to his ongoing peer relation problems.

In July 2022, on the last day of extended school year, Student engaged in one instance of physical aggression toward a peer when he swiped at a student on the playground, and later incited a high school student after verbally abusing the teacher, which resulted in the other student throwing a chair across the classroom. Student was sent home for the day, and he became fearful after the incident. Parent also had concerns regarding his safety after the incident.

After extended school year, Parent privately placed Student in Discovery Mood residential treatment center in Long Beach, but he was removed after six days for property destruction. Shortly thereafter, Parent privately placed Student in Trails wilderness program in North Carolina starting on July 23, 2022. On August 15, 2022,

at the beginning of the 2022-2023 school year, Parent sent Temecula Valley notice of Student's unilateral placement and a request for residential placement and residential placement reimbursement.

ISSUE 2a: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY'S
PLACEMENT OFFER IN THE AUGUST 22, 2022 AMENDMENT IEP
DOCUMENT WAS UNCLEAR

Student asserts Temecula Valley's placement offer to Student in the August 22, 2022 IEP was unclear because the placement offer is inconsistent with the IEP notes. Temecula Valley disagrees and asserts the offer was specific and clear.

Student's argument fails. The August 22, 2022 IEP notes show, and testimony corroborates, that the Temecula Valley IEP team members robustly discussed Student's placement with Parent and her advocate with documented communication back and forth. After discussion, the district members of Student's IEP team reiterated the placement offer the SEAL program with Temecula Valley and did not recommend or offer residential placement. Student asserts that the placement offer was unclear and denied Student a FAPE. The argument is unpersuasive as Temecula Valley's placement offer was unchanged, discussed, and clearly set out in the August IEP document and a subsequent prior written notice.

Both Parent and Parent's advocate expressed to Temecula Valley at the August 22, 2022 meeting, their belief that a residential treatment facility, and not the SEAL program, was appropriate. Parent and her advocate communicated to the IEP team that Student needed a higher level of care than the SEAL program, and Temecula Valley agreed to reconsider Parent's request for residential placement once the triennial assessment was

completed. The last sentence of the IEP notes states that no FAPE changes had been made in the August 2022 offer. Regarding placement, this statement is correct. Thus, Student's argument that the placement offer is unclear, fails.

Further, on the same day, Temecula Valley sent a prior written notice to Parent confirming it considered Parent's request for residential treatment and denying the residential treatment center request. The prior written notice explained the SEAL special day program in detail, and stated Temecula Valley's belief that Student continued to make progress in the program. Thus, Parent received further notice of Temecula Valley's placement offer.

The August 22, 2022 IEP document separately and taken with the prior written notice satisfied the requirement of a formal, written placement offer that clearly identified the SEAL special day class at Temecula Valley as the placement offer on August 22, 2022. Student failed to prove that the August 22, 2022 IEP placement offer was unclear.

ISSUE 2b: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY'S
COUNSELING OFFERS IN THE AUGUST 22, 2022 IEP DOCUMENT WERE
UNCLEAR SUCH THAT IT DENIED STUDENT A FAPE

Student maintains that the IEP was unclear because although the team changed Student's counseling offers at this IEP team meeting, the IEP notes state that no changes have been made to the FAPE offer. Temecula Valley asserts that the counseling offer was specific and clear.

Student failed to prove that the counseling offers in the August 2022 IEP denied Student a FAPE. On the services page in the August 22, 2022 IEP, the IEP

offered 30 minutes of individual counseling weekly through the SEAL program beginning August 24, 2022, through May 5, 2023, and 30 minutes three times a month of group therapy through the SEAL program from August 24, 2022, through May 5, 2023. The August 22, 2022 IEP notes confirmed the same counseling offers stated on the services page.

However, at the end of the IEP notes, there is a standalone sentence declaring that no changes were made to the FAPE offer. This standalone sentence is confusing and inconsistent as Temecula Valley increased Student's individual and group counseling offers. On balance, however, the service page clarifies any ambiguity created by this standalone sentence. Moreover, Student presented no evidence that Parent was confused by the counseling offers. In fact, at the IEP, Parent and her advocate discussed Student's counseling environment at the SEAL program and Parent believed Student needed a higher level of therapy and care. This shows that Parent understood the counseling offers.

Further, the August 22, 2022 prior written notice to Parent also confirmed the changes to the individual and group counseling offers in the IEP document. Student presented no evidence that Parent was confused with the prior written notice letter. Thus, taking the August 22, 2022 IEP document with the accompanying prior written notice, Temecula Valley met the requirements for formal, written, and clear counseling offers. Accordingly, Student failed to prove by a preponderance of the evidence that the August 22, 2022 IEP counseling offers were unclear.

Even if the counseling offers lacked sufficient clarity as claimed by Student, such a procedural violation neither deprived Parent of her ability to participate in the IEP decision-making process as asserted nor denied Student an educational benefit.

Student failed to present evidence that Parent was at all confused by the counseling offers. Parent was accompanied by an advocate at the IEP team who actively participated in the meeting as her representative. Student failed to attend the SEAL program after the offer as he was already unilaterally placed; thus, no loss of educational benefit ensued. Student failed to meet his burden by the preponderance of the evidence that Temecula Valley failed to make a clear offer of counseling services in the August 22, 2022 IEP, such that it denied Student a FAPE.

ISSUE 2c: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO OFFER APPROPRIATE INDIVIDUAL COUNSELING SERVICES IN THE AUGUST 22, 2022 IEP

Student maintains that Temecula Valley failed to offer appropriate individual and group counseling services at the August 2022 IEP. Temecula Valley maintains that it increased Student's individual and group counseling offer which were appropriate to meet Student's unique needs.

Temecula Valley attempted to minimize its decision to partially place Student in the high school program during extended school year as a preferred choice of Student. This choice, however, was precipitated by his poor peer relations in the middle school program and was not his IEP placement. Bryan Sebastian, Student's extended school year middle school teacher, explained that he would send Student to the high school program toward the second half of most days. While in the high school program, he was not with his peers his age and not working on his goals and school curriculum. Further, even while in the high school extended school year placement, his behavior

resulted in a major incident with a high school student. This should have put Temecula Valley on notice that Student needed more intensive counseling services to improve his peer relations.

At the August 2022 IEP team meeting, Temecula Valley offered additional counseling services. For individual counseling, it offered one 30-minute session weekly, and 90 minutes monthly of group counseling. This offer was not enough.

While Warner and Temecula Valley staff believed the counseling offers were appropriate, Student's escalated behaviors and diminished progress on his peer relations, and inability to fully participate in the middle school extended school year SEAL program, demonstrated that Student needed more intensive counseling services. Goldberg; Dr. Lisa Ware; a private neuropsychologist, and Jeniveve Rollins; his therapist at Trails wilderness program, testified that Student required over 30 minutes per week of individual counseling to meet his needs. This is corroborated by Student's escalating behaviors despite receiving counseling services through Temecula Valley.

Further, at the August 2022 IEP team meeting, Parent informed Temecula Valley that Student was throwing rocks at other students in the Trails wilderness program and continuing to have verbal outbursts and was kicked out of Discovery Mood residential treatment program for property destruction. Thus, Student's maladaptive behaviors in these unilateral placements significantly increased since attending the Temecula Valley SEAL program.

As already determined, more than 30 minutes weekly of educationally related individual counseling was needed to support Student's social-emotional, behavioral, and

mental health needs at school. Temecula Valley failed to offer that amount to Student. Student proved that Temecula Valley failed to offer Student appropriate individual counseling services at the August 2022 IEP.

ISSUE 2d: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY DENIED
STUDENT A FAPE BY FAILING TO CONSIDER A RESIDENTIAL TREATMENT
CENTER PLACEMENT AT THE AUGUST 22, 2022 IEP TEAM MEETING

Student maintains that Temecula Valley failed to give due consideration to the continuum of placement options at the August 22, 2022 IEP team meeting, specifically residential treatment. Temecula Valley asserts that the reason the IEP team meeting commenced was to discuss Parent's request for residential placement and it was considered.

Student's argument is unconvincing. The testimony at hearing and the August 22, 2022 IEP document confirms that a discussion took place regarding placement, and specifically considered residential placement as already discussed above. The evidence showed a discussion about the SEAL program, and discussions about his current residential placement in the wilderness program, as well as Parent and her advocate's arguments for residential treatment which were considered by Temecula Valley and corroborated in the August 2022 IEP team notes.

Further, Temecula Valley sent Parent a prior written notice on the same day, August 22, 2022, explaining its offer of the SEAL program as opposed to residential placement, as already discussed above. The IEP notes and prior written notice are consistent with the testimonial evidence from Temecula Valley IEP team members who were present at the meeting. These witnesses had personal knowledge of the

discussions at the meeting. Although the FAPE offer page in the IEP failed to state that a residential treatment facility was considered, overwhelming evidence to the contrary, both documentary and testimonial, established otherwise.

Student conflates Temecula Valley's decision to deny Student's request for residential treatment with not considering it. Although Temecula Valley did not agree with Parent or Parent's advocate that residential treatment for Student was appropriate, the evidence established that they did consider it. Student failed to meet his burden in proving that Student was denied a FAPE because Temecula Valley failed to consider the continuum of placement options, specifically the need for residential treatment, at the August 22, 2022 IEP team meeting.

ISSUE 2e: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO OFFER APPROPRIATE PLACEMENT TO STUDENT AT THE AUGUST 2022 IEP TEAM MEETING

Student asserts that Student's deteriorating mental health and escalating maladaptive behaviors required Temecula Valley to place Student in a residential treatment center. Temecula Valley maintains that the SEAL program was the appropriate placement for Student.

Student proved that Temecula Valley failed to offer an appropriate placement. Temecula Valley continued to offer the middle school SEAL program as placement for Student. While the SEAL program is a robust intensive therapeutic program that addresses needs like those of Student and appears to be a successful program for many students, it no longer met Student's needs. Since his time in the SEAL program, Student struggled with bullying others and being bullied, inciting others, and disrupting classroom and peers. This behavior escalated during extended school year as already

described and to a point where he was removed from his intended and offered placement for portions of the day in the middle school extended school year SEAL program.

Student continued to perceive peers were talking badly about him or making fun of him. This triggered negative behaviors toward his peers which then triggered the peers to make negative comments about him. This also included Student yelling racial slurs at other SEAL students. In turn, other students made anti-Semitic slurs back. Although Student was both a perpetrator and victim in this verbal aggression, maintaining Student's placement with this level of restriction that allowed Student to continue to direct racial slurs repeatedly, be verbally aggressive, and use profanity against other students, was inappropriate.

While Warner and other Temecula Valley staff downplayed this situation occurring in this middle school SEAL program as bantering, that is not the case. This environment was not conducive to Student, who had continued and significant behavioral issues at school stemming from peer relations. He was repeatedly exited from his middle school extended school year classroom to the high school program due to peer relations and was not attending the program for his age group.

Student had gains in some areas, but overall, Student could not fully attend his offered program. After the last incident in the extended school year high school program, Parent rightly had safety issue concerns. Student was verbally abusing a teacher, inciting a high school student, and causing significant disruption to the high school program. The aggression directed toward Student caused him significant fear. Temecula Valley should have been on notice that another placement for Student was

necessary. His peer relations needs were now the significant and overreaching issue that affected his ability to access his education in his offered placement. Student was no longer receiving some educational benefit under these facts.

The Temecula Valley SEAL program is unique in that it is the only middle school SEAL program classroom in the district. Their high school program has multiple classrooms. Thus, Temecula Valley could not move Student to another middle school SEAL classroom. Temecula Valley, therefore, should have offered another day school therapeutic program for Student that offered more behavioral and mental health supports imbedded in the program. Student proved that Temecula Valley failed to offer an appropriate placement at the August 2022 IEP team meeting.

Student argued at hearing that a residential treatment program should have been offered. However, as Student proved he was denied a FAPE because the offered placement was not appropriate, there is no need to analysis this issue any further.

ISSUE 2f-j: DID TEMECULA VALLEY DENY STUDENT A FAPE ARISING FROM THE OCTOBER 18, 2022 IEP TEAM MEETING?

Student continued at Trails wilderness program through October 25, 2022. During that time, Student received a private neuropsychological assessment and Temecula Valley completed its triennial assessment.

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ISSUE 2f: STUDENT PROVED THAT TEMECULA VALLEY'S COUNSELING
OFFER AT THE OCTOBER 2022 IEP DENIED STUDENT A FAPE

Student alleges that Temecula Valley failed to offer appropriate counseling services at the October 2022 IEPs. Temecula Valley asserts that its counseling offers were appropriate and met Student's needs.

Student proved that Temecula Valley's October 2022 counseling offers denied Student a FAPE. Temecula Valley held two IEP team meetings on October 18 and 25, 2022, called October 2022 IEPs. At the time of the October 2022 IEPs, Student's behaviors worsened at Trails with

Student proved that Temecula Valley's October 2022 counseling offers denied Student a FAPE. Temecula Valley held two IEP team meetings on October 18 and 25, 2022, called October 2022 IEPs. At the time of the October 2022 IEPs, Student's behaviors worsened at Trails with

- throwing rocks at other children,
- physical aggression toward staff,
- tantrums,
- elopement, and
- significant difficulty with peer relationships.

Student's mental health decompensated while there. Temecula Valley knew Student emotionally deteriorated at Trails and should have offered more intense counseling services for his return to Temecula Valley.

At that time, Temecula Valley's triennial assessment was complete. While at Temecula Valley, in May 2022, Student, Parent, and his teacher filled out the Behavioral Assessment System for Children, Third Edition, rating scales for the triennial assessment. It measures behavior and self-perceptions. The results showed that Student rated clinically significant scores on both externalizing, internalizing, and behavior and emotional symptoms. A clinically significant rating suggests a high range of maladjustment.

Parent placed Student at Trails while the triennial assessment was still underway. Temecula Valley continued to conduct Student's assessments at Trails. While at Trails, Student and Parent rated Student highly elevated in separation anxiety, humiliation/rejection, and social anxiety, with an overall score of highly elevated on the Multidisciplinary Anxiety Scale for Children-2. On the Children Depression Inventory, Second Edition, Student and Parent rated Student highly elevated for depression, and Rollins rated him as elevated. Student's scores showed an increase in maladjustment from his previous 2019 and 2020 social-emotional testing before he enrolled at Temecula Valley, and from his 2021 social-emotional testing at Temecula Valley. This information also put Temecula Valley on notice that Student needed more intensive counseling services.

By the time of the October 2022 IEPs, Temecula Valley's triennial assessment was complete. Morris, in her triennial report in three identical categories: noncompliance, disruption to classroom, and profanity from January through June 2022, demonstrated no improvement and significant worsening behavior while in the SEAL program. The IEP team had this data at the time of the October 2022 IEP team meetings.

In addition, Parent obtained an assessment from Ware that was completed in October 2022. A comparison of the data collected by Warner as referenced in her ERMHS report from August through September 2021 confirmed that Student's social-emotional and behavioral health was worsening.

While Temecula Valley contends that Student's counseling services coupled with his offered IEP supports served to address the root of his mental health and behavior needs, this argument is misplaced. Student needed more intense supports as evidenced through its own assessment results. Temecula Valley received sufficient information at the October 2022 IEPs revealing Student's counseling services needed to be increased. Ware, Rollins, and Goldberg persuasively opined that Student needed more than 30 minutes of individual counseling services per week.

Temecula Valley failed to offer additional counseling services after receiving the results of their assessments. and the information from Ware's report and Parent's input about his behaviors at Trails. Instead, it continued to offer 30 minutes weekly of individual counseling and 90 minutes monthly of group counseling as it had offered in August 2022. Student proved that Temecula Valley's individual counseling offer at the October 2022 IEPs was insufficient to meet his needs and denied Student a FAPE.

ISSUE 2g: STUDENT PROVED THAT TEMECULA VALLEY'S BEHAVIOR INTERVENTION PLAN DENIED STUDENT A FAPE

Student asserts that Temecula Valley's October 2022 tier III behavior support plan should have been based on a new functional behavior assessment and clear data collection but was not. Because of this, the behavior support plan was inappropriate and did not address Student's needs thus denying him a FAPE. Temecula Valley failed

to address this issue in its closing brief. However, during hearing, Temecula Valley argued that it had updated Student's behavior intervention plan, which was appropriate to address Student's behavioral needs.

Student met his burden of proof on this issue. A school district must develop a behavior support plan if the IEP team finds that the child's behavior impedes his own learning or the learning of others. (34 C.F.R. § 300.324 (a)(2)(1) (2006).)

Student asserted the behavior support plan that Temecula Valley offered in October 2022 was inappropriate for two reasons. First, Temecula Valley failed to conduct a functional behavior assessment before developing Student's tier III behavior intervention plan. A functional behavior assessment is an assessment that evaluates a Student's maladaptive behaviors to determine the antecedents and functions, or what the Student achieves from the maladaptive behaviors, and then proposes a behavior intervention plan to retrain Student to meet those needs in an alternative way.

The fact that Temecula Valley did not conduct a functional behavior assessment is undisputed. Dr. Chuck Norris, who holds a doctorate in counseling psychology and has conducted over 100 functional behavior assessments, asserted that it was best practices to conduct a functional behavior assessment before developing the tier III behavior support plan. Dolores Diaz, Temecula Valley's school psychologist, with experience conducting approximately 100 functional behavior assessments, also opined that a functional behavior assessment needs to be conducted before developing a tier III behavior support plan. Morris, who drafted the October 2022 tier III behavior support plan disagreed and failed to conduct one before drafting the revised behavior support plan.

Recently, the Ninth Circuit held that a functional behavior analysis is only required when a child is removed from a current placement due to behavioral issues. (*Butte School District No. 1 v. C.S.* (9th Cir. 2020) 817 Fed.Appx. 321 (*Butte*).) As *Butte* stated: "Our concern is whether the IEP and its underlying behavioral analysis was reasonable, not whether it was ideal" (*Ibid.*) Furthermore, if statutory requirements for assessments are satisfied, the U.S. Department of Education, Office of Special Education Programs, has advised that selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities. (*Letter to Anonymous* (OSEP Sept. 17, 1993) 20 IDELR 542; *M.W. v. Poway Unified School District* (S.D. Cal. Aug. 14, 2013) 2013 WL 4401673.) Under these facts, a functional behavior assessment should have been conducted. Student was being removed from his middle school extended school year program to the high school program due to peer relation issues.

Additionally, Morris failed to utilize the social-emotional data from the 2022 triennial assessment when developing the behavior support plan. Instead, she, along with the other Temecula Valley staff involved in developing the new behavior support plan, used the data from the May 2021 functional behavior assessment. Morris failed to explain why she relied on different and more recent assessment data for the triennial assessment conclusions and older and less relevant data for the October 2022 behavior support plan. She also conceded that 2021 behavior support plan was merely tweaked for the new plan. The October 2022 behavior support plan failed to include Student's more recent maladaptive behaviors to accurately determine what the current targeted behaviors should be. Thus, it was faulty.

Further, Student argued that the exact nature of the target behaviors or their functions were unclear in October 2022 behavior support plan because of Morris'

haphazard data collection techniques. Norris persuasively demonstrated the confusion in the data collection, mostly due to not using the more current behavioral data. He also established that different interventions should have been drafted for the October 2022 behavior intervention plan based on the more current data to address Student's behaviors, because they were still occurring but at a higher frequency. Thus, Norris showed that the current interventions were no longer effective and should have been updated. No other witness persuasively disputed Norris' opinion on this point. Thus, Student proved that the October 2022 behavior intervention plan failed to address Student's current needs and denied Student a FAPE.

ISSUE 2h: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY DID
NOT CONSIDER THE CONTINUUM OF PLACEMENT OPTIONS IN THE
OCTOBER 18, 2022 IEP

Student maintains that Temecula Valley failed to meaningfully consider residential treatment at the October 18, 2022 IEP team meeting. In support of that contention, Student argues that Temecula Valley neither considered Ware's recommendations nor conducted an ERMHS assessment. Temecula Valley asserts that residential treatment placement was considered but rejected by the Temecula Valley IEP team members.

Student failed to prove that a residential treatment center was not considered as an option at the October 2022 IEPs. Temecula Valley conducted the October 2022 IEP team meetings to review eligibility, the assessments, and a possible change of placement.

The offer of FAPE page in the October 2022 IEPs, under special education service options, clearly shows that the "Other" box was checked and "RTC", meaning residential

treatment center, was written below the box. Additionally, the IEP team notes show a lengthy discussion between Temecula Valley IEP team members with Parent and her advocate regarding the SEAL program versus a residential treatment center.

Parent's advocate informed Temecula Valley that Student would be attending New Focus residential treatment after completing Trails and should be offered a residential treatment center placement. Temecula Valley asserted that the SEAL program was appropriate for Student, not residential treatment. Parent stated she would not consider the SEAL program. She insisted only on a residential treatment facility for Student. Thus, the Temecula Valley IEP team members agreed that a residential treatment was not an appropriate educationally related placement. Parent and her advocate disagreed. Despite this disagreement, Temecula Valley considered a residential treatment center placement.

Additionally, on November 14, 2022, Temecula Valley sent a prior written notice explaining in detail its reasoning for declining Student's request for a residential treatment program at the October 2022 IEPs, in favor of the SEAL program. Accordingly, Student failed to prove that a residential treatment center was not considered at the October 2022 IEP team meetings.

ISSUE 2i: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO OFFER
APPROPRIATE PLACEMENT TO STUDENT AT THE OCTOBER 2022 IEPs.

Student contends Temecula Valley could not offer an appropriate placement to Student based on its incomplete assessment and inaccurate data. Temecula Valley maintains it offered Student appropriate placement at the October 2022 IEPs.

Temecula Valley continued to offer the middle school SEAL program for Student's placement. As already determined, Temecula Valley failed to offer Student an appropriate placement because Student was no longer accessing his education in the middle school SEAL program. Thus, it should have offered a different placement with more behavioral and therapeutic supports.

Further, Temecula Valley's social-emotional testing completed in October 2022 reflected significant and numerous clinically significant ratings across multiple domains and elevated ratings in anxiety and depression. This data showed Student's social-emotional state and mental health deterioration since his social-emotional testing while at the charter school in 2019 and after months attending the SEAL program. This should have triggered Temecula Valley to offer a different therapeutic placement to meet Student's needs. The SEAL program could no longer meet them. The data showed considerable maladjustment in the SEAL program, even with the services and supports offered to him.

While Student argued that Temecula Valley should have offered residential placement, Student proved that Temecula Valley failed to offer appropriate placement. Thus, no further analysis is necessary.

ISSUE 2j: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY DID NOT
CONSIDER DR. WARE'S PRIVATE NEUROPSYCHOLOGICAL REPORT'S
RECOMMENDATIONS AT THE OCTOBER 18, 2022 IEP TEAM MEETING

Dr. Ware conducted an independent neuropsychological evaluation of Student when he was privately placed at Trails and completed it on October 6, 2022. Student contends that Temecula Valley ignored Dr. Ware's recommendations from her October

2022 neuropsychological evaluation report. Temecula Valley maintains that it considered the report and its results, but it had no legal obligation to adopt Ware's recommendations.

When presented with a private expert's report, a school district must consider the results of the assessment in any decision made with respect to the provision of FAPE to the student. (34 C.F.R. § 300.502(c)(1); Ed. Code, § 56329, subd. (c).) There is no requirement that the school district adopt the findings of the private evaluation. (See *T.S. v. Board of Educ. of Town of Ridgefield*, (2nd Cir. 1993) 10 F.3d 87.)

Student failed to prove that Temecula Valley overlooked Dr. Ware's assessment results as legally required. Morris reviewed the Ware's neuropsychological report and notated its diagnoses and results in Temecula Valley's October 18, 2022 Triennial Multidisciplinary Team Assessment Report at length. Morris presented Ware's report and its diagnoses and results were memorialized in the IEP team meeting notes. The evidence showed that Ware's report was discussed at length.

Student complains that the recommendations were not listed in the IEP notes, and thus overlooked. Temecula Valley is not legally required to list verbatim or even summarize everything that occurred during an IEP team meeting. Temecula Valley is required to consider the results, but not required to adopt any of the reports' findings or recommendations. The evidence showed that Temecula Valley considered Ware's results.

Student's citation to *Michael P. v. Department of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066, (Michael P.) is unpersuasive. The court determined that the IDEA only requires a school district to consider the results of the evaluation; it does not require it

to adopt the conclusions. (Michael P., *supra.*, 656 F.3d 1057, 1066, fn. 9.) Accordingly, Student failed to prove by a preponderance of the evidence that Temecula Valley did not consider what was legally required of them at the October 2022 IEP team meetings.

ISSUE 2k-m: DID TEMECULA VALLEY DENY STUDENT A FAPE ARISING FROM THE MAY 2, 2023 IEP OFFER?

Temecula Valley commenced its annual IEP team meeting for Student on May 2, 2023, which was continued to May 25, 2023. These will collectively be called the May 2023 IEPs. At the time of the May 2023 IEPs, Student continued to be unilaterally placed at New Focus residential treatment center in Utah.

ISSUE 2k: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO OFFER APPROPRIATE COUNSELING SERVICES IN THE MAY 2023 IEP

Student alleges that Temecula Valley failed to offer appropriate counseling services at the May 2023 IEP. Temecula Valley asserts that its counseling offers were appropriate and met Student's needs.

Student proved that Temecula Valley's May 2023 counseling offers denied Student a FAPE. At the May 2023 IEPs, Temecula Valley offered the same counseling services it offered at the August and October IEP team meetings, one 30-minute counseling session per week, and three 30-minute group counseling sessions per month.

At the time of the May 2023 IEP team meetings, Student had attended New Focus residential treatment center since October 27, 2022. Temecula Valley learned that Student continued to have peer conflict within the program, was having a harder time

not getting involved in negative behaviors and continued to be reactive and disruptive in class. He continued to need assistance with accepting feedback, slowing himself down, using coping skills, and working on a relationship with his dad. New Focus saw some improvement with self-control and stopping to think before reacting. Overall, however, there was little improvement for Student emotionally and behaviorally while at New Focus. Through New Focus' input at the May 2023 IEP team meetings, Temecula Valley knew Student continued to need more intense counseling services before his return to Temecula Valley.

Temecula Valley's contention that Student's counseling services, coupled with his offered IEP supports, served his mental health and behavioral needs was unpersuasive. Goldberg, Rollins, Ware, and the director of New Focus, Brandon Park, persuasively established that this amount of counseling services was not appropriate for Student. Student received one hour of individual counseling services at New Focus and continued to struggle behaviorally. The information gleaned from New Focus should have put Temecula Valley on notice that Student needed more counseling services. Instead, it continued to offer the same amounts it offered at the August and October 2022 IEP team meetings. Student proved that Temecula's counseling offers at the May 2023 IEPs were insufficient to meet his needs and thus denied Student a FAPE.

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ISSUE 2I: STUDENT FAILED TO PROVE THAT TEMECULA VALLEY FAILED TO
CONSIDER A RESIDENTIAL TREATMENT CENTER AT THE MAY 2023 IEP
TEAM MEETING DENYING STUDENT A FAPE

Student maintains that Temecula Valley failed to consider the continuum of placement options at the May 2023 IEP team meetings, specifically residential treatment. Temecula Valley asserts that residential treatment placement was considered but rejected by the Temecula Valley IEP team members.

Student failed to prove that a residential treatment center was not considered as an option at the May 2023 IEPs. The offer of FAPE page in the May 2023 IEPs, under special education service options shows that the "Other" box was checked and "RTC", meaning residential treatment center, was written below the box. Additionally, the IEP notes showed a discussion regarding the district program for educational placement. It also shows that New Focus endorsed Student continuing at its residential treatment center. Further, the June 20, 2023 prior written notice to Parent memorialized the May 2023 IEP team's reasoning for rejecting Student's request for a residential treatment center placement at the May 2022 IEP team meetings. Student failed to prove by a preponderance of the evidence that Temecula Valley failed to consider a residential treatment placement at the May 2022 IEP team meetings.

ISSUE 2m: STUDENT PROVED THAT TEMECULA VALLEY FAILED TO OFFER
AN APPROPRIATE PLACEMENT AT THE MAY 2023 IEP TEAM MEETINGS

Student argued that Temecula Valley should have offered a residential treatment program to Parent at the May 2023 IEPs. Temecula Valley asserted that its SEAL program was appropriate for Student.

At the time of the May 2023 IEPs, Temecula Valley continued to offer the same placement to Student, Temecula Valley's middle school SEAL program. For the reasons already determined, this program had not been appropriate for Student since August 2022.

Additionally, Temecula Valley received information from New Focus regarding Student's progress which corroborated that Student continued to have similar maladaptive issues at New Focus. Thus, Temecula Valley should have known that Student continued to need a therapeutic program flexible enough or with multiple classrooms within the same program and age group to manage Student's mental health and behavioral needs. Temecula Valley could not offer that through its middle school SEAL program. Student proved that Temecula Valley failed to offer the appropriate placement to Student at the May 2023 IEP team meeting. While Student argued that Temecula Valley should have offered a residential treatment center, there is no need to analysis this as Student proved that Temecula Valley's offered placement, the middle school SEAL program. denied Student a FAPE.

CONCLUSIONS AND PREVAILING PARTY

ISSUE 1a:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to make a clear offer as to the frequency and delivery of counseling services in the February 28, 2022 amendment IEP.

Temecula Valley prevailed on Issue 1a.

ISSUE 1b:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to consider the placement options, specifically the need for a residential treatment center, in the February 28, 2022 amendment IEP.

Temecula Valley prevailed on Issue 1b.

ISSUE 1c:

Student proved that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to offer appropriate counseling, mental health, and behavior services and supports in the February 28, 2022 amendment IEP.

Student prevailed on Issue 1c.

ISSUE 1d:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to offer an appropriate placement in the February 28, 2022 amendment IEP.

Temecula Valley prevailed on Issue 1d.

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ISSUE 1e:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to offer an appropriate placement in the April 7, 2022 amendment IEP, by failing to consider a need for a change of placement.

Temecula Valley prevailed on Issue 1e.

ISSUE 1f:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing offer goals to address behavior, mental health, and social-emotional needs in the May 6, 2022 IEP.

Temecula Valley prevailed on Issue 1f.

ISSUE 1g:

Student proved that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to offer appropriate counseling services in the May 6, 2022 IEP.

Student prevailed on Issue 1g.

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ISSUE 1h:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to offer additional behavior and mental health supports and services in the May 6, 2022 IEP.

Temecula Valley prevailed on Issue 1h.

ISSUE 1i:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to make a clear offer as to the frequency and delivery of counseling services impeding parent's ability to participate in the May 6, 2022 IEP process.

Temecula Valley prevailed on Issue 1i.

ISSUE 1j:

Student proved that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to timely complete the multidisciplinary assessment.

Student prevailed on Issue 1j.

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ISSUE 1k:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2021-2022 school year by failing to assess Student in autism spectrum disorder but proved a FAPE denial for Temecula Valley's failure to assess in specific learning disability.

Student partially prevailed on Issue 1k, and Temecula Valley partially prevailed on Issue 1k.

ISSUE 2a:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to make a clear offer of placement in the August 22, 2022 amendment IEP.

Temecula Valley prevailed on Issue 2a.

ISSUE 2b:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to make a clear offer of counseling in the August 22, 2022 amendment IEP.

Temecula Valley prevailed on Issue 2b.

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ISSUE 2c:

Student proved that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to offer appropriate individual counseling services in the August 22, 2022 amendment IEP.

Student prevailed on Issue 2c.

ISSUE 2d:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to consider the continuum of placement options, specifically the need for a residential treatment center, in the August 22, 2022 amendment IEP.

Temecula Valley prevailed on Issue 2d.

ISSUE 2e:

Student proved that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to offer appropriate placement at the August 2022 amendment IEP.

Student prevailed on Issue 2e.

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ISSUE 2f:

Student proved that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to offer appropriate counseling services in the October 2022 amendment IEPs.

Student prevailed on Issue 2f.

ISSUE 2g:

Student proved that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to offer an appropriate behavior intervention plan in the October 18, 2022 IEP.

Student prevailed on Issue 2g.

ISSUE 2h:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to consider the continuum of placement options in the October 18, 2022 IEP.

Temecula Valley prevailed on Issue 2h.

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ISSUE 2i:

Student proved that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to offer appropriate placement at the October 2022 amendment IEP.

Student prevailed on Issue 2i.

ISSUE 2j:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to consider the recommendations of the October 2022 private neuropsychological report at the October 2022 IEPs.

Temecula Valley prevailed on Issue 2j.

ISSUE 2k:

Student proved that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to consider offer appropriate counseling services at the May 2, 2023 IEP.

Student prevailed on Issue 2k.

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ISSUE 2l:

Student failed to prove that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to consider the continuum of placement options in the May 2, 2023 IEP, specifically the need for a residential treatment center placement.

Temecula Valley prevailed on ISSUE 2l.

ISSUE 2m:

Student proved that Temecula Valley denied Student a FAPE during the 2022-2023 school year by failing to offer appropriate placement at the May 2023 IEP.

Student prevailed on Issue 2m.

REMEDIES

Student prevailed on Issues 1c, 1g, 1j, 2c, 2e, 2f, 2g, 2i, 2k, 2m, and partially prevailed on Issue 1k. Student proved that Temecula Valley failed to:

- offer appropriate counseling services from February 28, 2022, through the time of the filing of the first amended complaint on August 10, 2023;
- offer appropriate placement from August 22, 2022, through August 10, 2023;

- complete timely assessments by September 7, 2022;
- assess for specific learning disability in its May 2022 through October 2022 triennial assessments and multidisciplinary report; and
- offer an appropriate behavior intervention plan at the October 2022 IEP team meetings.

As remedies, Student requested reimbursement in the amount of \$261,275.38 for the cost of placement at New Focus residential treatment center from October 25, 2022, through November 30, 2023; travel costs related to Student's New Focus placement in the amount of \$7,632.48; and the cost of Ware's assessment in the amount of \$3,760, for a total of \$272,667.86. Temecula Valley argued no reimbursement was warranted because it provided Student a FAPE. Additionally, it asserted Student's private placement was unreasonable as Parent failed to adequately consider other more suitable placements.

Courts have broad equitable powers to remedy the failure of a local educational agency to provide a FAPE to a child with a disability. (20 U.S.C. § 1415(if)(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] (*Burlington*); *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).

The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove, supra*, 638 F.3d. at p. 1239.)

In remedying a FAPE denial, the student is entitled to relief that is “appropriate” considering the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) 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.)

This Decision holds that Temecula Valley denied Student a FAPE from February 28, 2022, through August 10, 2023. This Decision orders partial reimbursement for Student’s unilateral residential placement for the expenses attributable to Student’s academics, compensatory education for counseling services, and reimbursement for Ware’s neuropsychological assessment.

FAILURE TO OFFER APPROPRIATE COUNSELING SERVICES SINCE FEBRUARY 2022 AND APPROPRIATE PLACEMENT SINCE AUGUST 2022

This Decision finds that Temecula Valley denied Student a FAPE, in certain respects, spanning the entire time at issue. Considering the failures documented above, it was reasonable for Parent to seek educational alternatives for Student after the end of extended school year in July 2022 and Student proved that Temecula Valley failed to offer appropriate placement since August 2022. Parent notified Temecula Valley she intended to unilaterally place Student and request reimbursement on August 15, 2022. While it is well within the Parent’s discretion to decide to unilaterally place Student in a residential treatment center, whether to reimburse Parent for this decision is another question.

Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE,

and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [1055 S.Ct. 96] (*Burlington*).) When a school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is “appropriate” in light of the purposes of the IDEA.

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 Bd. of Educ.* (5th Cir. 1986) 790 F.2d 1153, 1161.) 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 student with an educational benefit. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14, [114 S.Ct. 361, 126 L.Ed.2d 284] (*Carter*).) Parents may receive reimbursement for the unilateral placement if it is appropriate. (34 C.F.R. § 300.148(c)(2006); Ed. Code, § 56175; *Carter, supra*, 510 U.S. at pp. 7, 15-16].) The appropriateness of the private placement is governed by equitable considerations. (*Ibid.*) The determination of whether to award reimbursement and how much to award is a matter within the discretion of the hearing officer. (*School Committee of Burlington v. Department of Ed. supra*, 471 U.S. at p. 369.)

In *C. B. v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3 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 had been awarded only partial reimbursement because the placement did not address all 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 furnishes every special service necessary to maximize their child’s potential. They need only to demonstrate that the placement provides 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. Bd. of Education* (2d. Cir. 2006) 459 F.3d 356, 365 (citations and emphases omitted)]).)

The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Puyallup, supra*, 31 F.3d at p. 1496.) Factors to be considered when considering the amount of reimbursement to be awarded include the existence of other, more suitable placements; the effort expended by the parent in securing alternative placements; and the general cooperative or uncooperative position of the school district. (*Target Range, supra*, 960 F.2d at p. 1487; *Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1109.)

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RESIDENTIAL TREATMENT WAS NOT APPROPRIATE FOR EDUCATIONAL PURPOSES TO RECEIVE REIMBURSEMENT

Rollins, Ware, and Park endorsed residential treatment as the appropriate placement for Student, and Park specifically endorsed New Focus for Student. Student failed to prove that residential treatment was the appropriate educational placement for Student in the least restrictive environment for reimbursement purposes.

Student did not establish that residential treatment was needed for educational purposes. Residential placement is considerably more restrictive than day school. (See Kerkam, *supra*, 931 F.2d at p. 87; G.D., *supra*, 930 F.2d at p. 948; Carlisle, *supra*, 62 F.3d at p. 534.) Student's maladaptive behaviors at school did not require residential treatment. While his behaviors were not appropriately addressed in the SEAL program, they were also not so severe that they could not have been adequately addressed with more therapeutic and behavioral supports available in a day program. The evidence did not establish Student required full time, residential treatment, to access his education. Rather, the evidence established that Student's more intense maladaptive behaviors existed in the home.

On June 20, 2022, while Student was attending the Temecula Valley extended school year program, Parent emailed Warner about Student's increasingly aggressive behaviors toward her and Student's siblings. Student was pushing, shoving, and pinning his siblings to the wall. Parent was considering placing Student in a residential treatment center again and went to Utah to look at a residential placement for Student. This occurred before Student had the two incidents on the last day of summer school and before she had safety concerns for Student in the SEAL program. Parent stated at hearing that at that time, she could not leave Student home alone with his siblings and

she needed to continue to work. Parent had difficulty keeping an au pair due to Student's behaviors at home. The evidence established that Parent's need for residential treatment for Student was primarily based on Student's behaviors at home. These maladaptive behaviors endangered her other children and made it difficult for Parent to work. While Parent's situation was unfortunate and difficult, it is not the responsibility of a school district to offer residential treatment for this purpose. The evidence established that Parent's concern for her other children drove the decision to place Student residentially, not Parent's objection to the offered program or Student's ability to access his education. Student failed to prove that Student's behaviors at school could not be managed in a less restrictive setting.

After extended school year ended on July 8, 2022, Parent placed Student in Discovery Mood and later in Trails wilderness program in July 2022, but it was not until August 15, 2022, after Student was already in the wilderness program, that Parent requested residential treatment from Temecula Valley and reimbursement, and changed her reasoning to both home and school issues. At that time, she was receiving assistance from an educational consultant. Student's behaviors at home, and not the problems at school which continued to be significantly less severe, prompted Parent's unilateral residential placement.

As already discussed, Student failed to prove that residential placement was appropriate for educational purposes and the least restrictive environment. Student received educational benefit through the beginning of extended school year until he continually was removed to the high school extended school year SEAL classroom. Student failed to show that the behaviors at school could not be addressed in a less restrictive setting with additional supports, instead of a 24-hour seven day a week, highly restrictive locked residential facility.

After Student entered Trails wilderness program, Parent obtained a neuropsychological assessment from Ware that was in October 2022 and recommended residential treatment. Ware did not receive any information about Student from Temecula Valley and had not seen Student in the SEAL program or received any of his educational related records before assessing Student. Ware's assessment was fraught with problems.

Ware's assessment process did not adhere to testing protocols required by the authors of the testing materials, including assessing Student in academics in a group setting. She also failed to observe Student in any educational setting or observe him at all except during her own testing. Her testing was over a block of five hours for a student with attention deficit hyperactivity disorder. She failed to interview any of Student's teachers.

Ware's synopsis of Student's issues focused mainly on, and included numerous paragraphs about, Student's home issues. At home, Student exhibited

- significant verbal and physical aggression,
- 30-minute tantrums,
- yelling,
- cursing,
- intentionally hitting his head,
- pulling out his hair, and
- obsessive angry episodes with Parent.

The synopsis merely touched on Student's problems at school of

- negative social interactions,
- verbal aggression,

- work completion,
- transitions, and
- emotional reactivity.

Ware's report recommended placement in a therapeutic school or a residential treatment center. A therapeutic school includes day therapeutic programs. However, at hearing, Ware state that that was a mistake in her report, and she meant a residential therapeutic boarding school or a residential treatment center. However, the inconsistency in her placement recommendation in her report versus her testimony at hearing lessened her persuasiveness on this matter.

Ware had never seen Student in any educational setting and has never worked in a kindergarten through 12th grade educational setting. Her opinion was based on her assessment and Parent's concerns, which were almost entirely related to Student's home issues. Without legally compliant testing, no educationally related documentation from Temecula Valley, reliance mostly on Parent's concerns, the focus of the report on home issues, and inconsistency with her report, Ware's testimony was unpersuasive in demonstrating Student required a residential placement for educational purposes.

Rollins testimony was equally unconvincing for some of same reasons. Rollins, like Ware, did not review Student's IEPs before testing, and report cards or any Temecula Valley educationally related documents. Rollins knew little of Student's prior educational program at SEAL and had never worked in a school setting. Student's behaviors escalated while at Trails, and her opinion that he needed residential treatment over a day therapeutic program was based on her experience with Student at Trails, an inappropriate educational placement for him that only escalated his behavioral and emotional problems.

Student failed to provide any persuasive documentary or testimonial proof that Student made any educational or social-emotional progress at Trails wilderness program. Rollins could not credibly discuss his educational progress as she had no experience with Student at Trails educationally, and the behavior described by her and Parent while at Trails showed a significantly greater emotional decline than at the SEAL program. Thus, Rollins opinion was given little weight. Before entering New Focus Academy on October 27, 2022, no persuasive evidence was presented that Student required one of the most restrictive settings, a residential treatment program, for educational purposes.

Student failed to prove that Student engaged in self-harm, significant physical aggression, attempting self-harm, refusing to go to school, or elopement to any degree such that Student required a 24-hour residential treatment center placement to access his education. Even with Student's issues with peer relations and increasing maladaptive behavior at SEAL, Student exhibited less severe behaviors at SEAL than at Discovery Mood and Trails, both which were residential treatment programs.

NEW FOCUS ACADEMY WAS NOT AN APPROPRIATE PLACEMENT FOR STUDENT

Student failed to demonstrate that New Focus was an appropriate placement for Student. New Focus is a residential treatment center with an emphasis on students with autism and social-emotional and functional deficits.

New Focus had approximately 30 residents ranging from middle school to young adults, over the age of 18. Student was also housed with another resident and did not have his own bedroom. Having young adults and older minors at the facility was not

appropriate for Student. Even at the SEAL program, his behavioral escalation was typically tied to peer interaction. New Focus required nearly constant peer interaction.

Student showed educational progress in his academics at New Focus. New Focus was not certified by the State of California as a nonpublic school. (Ed. Code §§ 56366, subd.(d), 56366.1) Despite this and not having most teachers with proper credentials to teach in a general education and special education setting, Student demonstrated that he made progress academically at New Focus resulting in passing grades.

Student failed to show that Student made sustained progress emotionally or behaviorally at New Focus. Although Park and Student's therapist, Matthew Jimenez, testified that Student's behaviors had reduced, this was not supported by the documentary evidence. The documentary evidence showed small gains, at times, with repeated regression and overall escalation in his emotional needs and maladaptive behaviors.

Further, Park conceded that New Focus' progress reporting could be improved. Because of the inadequate progress reporting, New Focus could not determine accurately Student's program behaviorally and emotionally. Student presented monthly treatment team meeting notes to support that Student made progress. The notes lack any means to objectively show progress. The notes consist of treatment team comments with no concise data collection method or way to measure progress. It is unclear if progress is consistently collected on at regular intervals or systematically collected at all. Furthermore, the treatment notes show a lack of improvement behaviorally and emotionally as time goes by in the New Focus program. Park conceded that by October 2023, Student's emotional reactivity increased even although Student had been in the placement for almost one year.

Student's goals at New Focus were unmeasurable, with no baselines, and with a lack of appropriate ability to report progress. Thus, New Focus could not give accurate information on Student's progress. Student had no academic goals. All goals had generic interventions which were family therapy, group therapy, individual therapy, and recreation therapy or had no interventions or services at all. Park made clear that New Focus is under no obligation to follow Student's IEP goals unless they are under contract with a school district, which they were not in Student's case. Further, New Focus did not have Student's educational records when he arrived at the school and did not receive them until 2023. Without the ability to accurately determine Student's progress and current needs, Student failed to show that this was an appropriate placement for Student.

Park, with significant experience as a neuropsychologist, never worked in an educational setting or any other day or residential treatment facility. Park founded and opened New Focus because he believed other programs were lacking and did not incorporate his recommendations into their programs. Park seemed unaware that it is the decision of an IEP team and not one individual to decide what to offer a special education student. The social-emotional fluency program at New Focus was created by Park but no evidence was presented that this is an evidence-based program or had evidence-based interventions.

Although Park endorsed residential treatment for Student, Student made little to no progress behaviorally and emotionally at New Focus, from what could be ascertained from the inadequate progress reporting. Thus, no persuasive evidence was presented that residential treatment could meet Student's educational needs. No persuasive evidence showed that residential treatment was needed for educational purposes or that it was the least restrictive environment. Student failed to prove that a residential

treatment program was appropriate for Student. The evidence generally established that residential placement may have contributed to Student's increased mental health needs and maladaptive behaviors rather than appropriately addressing them. The evidence did not establish that reimbursement for New Focus' residential program was an appropriate or equitable remedy.

REIMBURSEMENT

Student established that New Focus met Student's academic needs and little evidence that New Focus provided therapeutic benefit to Student. Student overall received some educational benefit in his academics. Although Parent is a medical doctor, she is not an educator, and earnestly believed the program would benefit Student.

Partial reimbursement is the appropriate remedy in this case. Full reimbursement is not awarded because Student did not require residential placement to meet his educational needs. Additionally, his needs could have been met in a far less restrictive setting. Student will, therefore, be reimbursed for the educational component for the New Focus program.

Student established that the percentage of daily tuition for educational purposes was \$164 per day out of \$600. Student spent a total of 288 days at New Focus from October 27, 2022, to August 10, 2023. This amount is \$47,232.

Parent's mother paid for Student's tuition and expenses at New Focus and provided documentary evidence in support of the cost. Mother established that the money is a loan to Parent, and Parent is expected to repay the loan to her mother. Temecula Valley, as an equitable remedy, will reimburse Parent in the amount of \$47,232.

COMPENSATORY EDUCATION

Student proved that Temecula Valley denied him a FAPE by failing to offer appropriate counseling services to Student from February 2022 and an appropriate behavior intervention plan since October 2022. Student failed to submit any evidence that addressed compensatory education including amounts and duration. Ultimately, the undersigned relied upon equitable judicial discretion to craft an appropriate compensatory education remedy.

An administrative law judge can award compensatory education as a form of equitable relief. (*Park, supra*, 464 F.3d at p. 1033.) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Ibid.*; *Puyallup, supra*, 31F.3d at p.1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) Compensatory education is a prospective award of educational services designed to catch-up the student to where the student should have been absent the denial of a FAPE. (*Brennan v. Regional Sch. Dist. No. 1* (D. Conn. 2008) 531 F.Supp.2d 245, 265.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

Given Student's escalating mental health and behavioral needs at New Focus, reimbursement for therapeutic services at New Focus is not awarded. Despite that, the evidence established that Student needs significant counseling services as a compensatory remedy to address Temecula Valley's failure to offer appropriate counseling services from February 28, 2022, through August 10, 2023, and its failure to offer an appropriate behavior intervention plan from October 25, 2022, through August 10, 2023. As an equitable remedy, Student will receive four hours per month of counseling services from February 28, 2022, through August 10, 2023, for a total of 70 hours of individual counseling.

Accordingly, Temecula Valley is ordered to provide a total amount of 70 hours of one-to-one individual counseling services through a certified non-public agency. The compensatory services must be completed by January 31, 2026.

FAILURE TO TIMELY ASSESS AND ASSESS IN SPECIFIC LEARNING DISABILITY

Student established that Temecula Valley failed to conduct a timely triennial assessment and multidisciplinary report and failed to assess for specific learning disability. Student requested reimbursement of Ware's neuropsychological evaluation report. Reimbursement of Ware's report is appropriate for these FAPE violations. Student failed to provide documentation as to the assessment cost; however, Student stated in his closing brief the cost was \$3,760.

Despite the errors in Ware's assessment, Parent was left to go on the open market to get updated information about Student due to Temecula Valley's failure to timely complete its assessment and failure to assess in specific learning disability. It was

reasonable for Parent to do so under these facts. Also, despite the errors in Ware's report, there was some useful information about Student's autism characteristics. Accordingly, as an equitable remedy for Temecula Valley's failure to timely complete the triennial assessment and report and failing to complete testing in the category of a specific learning disability, Temecula Valley will reimburse Parent for the cost of Ware's neuropsychological report, not to exceed \$3,760.

All of Student's further requests were carefully considered and denied. Student failed to prove entitlement to any other remedy.

ORDER

1. Temecula Valley must partially reimburse Parent for expenses incurred while Student attended New Focus. Within 60 calendar days of this Decision, Temecula Valley will reimburse Parent in the total amount of \$47,232.
2. Temecula Valley must fund 70 hours of individual counseling services from a certified non-public agency of Parent's choice. Within 30 days of the date of this Decision, Temecula Valley must give Parent a list of non-public agencies it has contracts with to provide compensatory services. If Parent selects a non-public agency Temecula Valley does not have a contract with, Temecula Valley must establish direct payment to the certified non-public agency Parent selected. The hours will be available to Student until January 31, 2026, and will be forfeited thereafter. Temecula Valley must reimburse Parent at the federal mileage rate for transportation costs for one round trip per counseling session.

3. Temecula Valley must reimburse Parent for Ware's neuropsychological evaluation report not to exceed \$3,760. Within 30 days of this Decision, Parent must provide Temecula Valley proof of payment of Ware's neuropsychological evaluation report. Parent will receive reimbursement based upon proof of payment. Temecula Valley must reimburse Parent within 60 calendar days of receiving proof of payment.
4. 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. Under Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Cynthia Clarke Fritz

Administrative Law Judge

Office of Administrative Hearings