

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011040869

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on September 26, 27, 28, 29, October 6, and 7, 2011, in San Juan Capistrano, California, and telephonically on October 10, 2011, in Van Nuys, California.

Danielle Augustin and Sara Gapsin, Attorneys at Law, represented Student. Student's father (Father) attended all seven days of hearing. Student's mother (Mother) attended on September 26, 2011, and portions of the hearing on September 27, 28, and 29, 2011. Student attended on September 26, 2011, and portions of the hearing on September 27, and October 6, 2011.

Ernest Bell, Attorney at Law, represented the Capistrano Unified School District (District). District representative, Dr. Crystal Bejarano, Informal Dispute Resolution Specialist, attended all seven days of hearing. Joseph Jones, Program Specialist for District, attended all days except for October 10, 2011.

Student filed his request for due process hearing (complaint) on April 20, 2011. On June 1, 2011, for good cause shown, OAH granted the parties' joint request to continue the due process hearing. On October 10, 2011, at the close of the hearing, the parties were granted permission to file written closing arguments by October 28, 2011.

Upon receipt of the written closing arguments, the record was closed and the matter was submitted.

ISSUE

Did District deny Student a free appropriate public education (FAPE) from April 20, 2009 to June 10, 2010, by failing to identify and appropriately assess Student to determine whether Student qualified for special education and related services?

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND INFORMATION

1. Student is a 19-year-old young man, who, at all relevant times, resided within the District.
2. During Student's elementary school years in District, Student excelled in school, and performed in either the advanced or proficient range in language arts and mathematics on annual Standardized Testing and Reporting (STAR) exams. During his middle school years, Student was an above-average student. Specifically, during sixth grade, his grade point average ranged from 2.67 to 3.17. In seventh grade, it ranged from 3.00 to 3.67, and in eighth grade, his grade point average for the first, second, third, and fourth quarters were 3.50, 3.17, 3.33, and 3.17, respectively.
3. Student's eighth grade Algebra teacher, Marie Tahboz, who had been teaching for the last 30 years, 19 of those for District, provided testimony at hearing. Ms. Tahboz described Student as a very good pupil. He maintained very good grades, was diligent, did his homework, completed his tests, and liked to check his work. He was kind, had friends, was well respected, and was respectful of others. She explained that Student always seemed happy, and never presented as someone who was sad or depressed.

4. Student engaged in several acts of misconduct during middle school, which District documented in a discipline log. Specifically, when Student was in seventh grade, he repeated a derogatory statement he heard from another student regarding a fellow student's bra. When Student was in eighth grade, he threw food at another student and then told her to "shut the fuck up." He also defied campus supervisors on several occasions by refusing to follow their directions, for which he received detention. In addition, Student received lunch detention several times for sending text messages in class. Student also received lunch detention for several instances of arriving late to class.

5. Also in eighth grade, Student received a citation from Student Resource Officer, Deputy Lance Christensen, for smoking cigarettes at a high school football game held at District's Tesoro High School. In a separate incident, at approximately 1:00 a.m., the Orange County Sherriff's Department cited Student for violating the county's 11:00 p.m. curfew while out with his friends.

6. Father, who provided testimony at hearing, explained in eighth grade, Student had become more disruptive at home. He fought often with Parents, and tried to intimidate Mother by using a loud voice. Also, Student became more withdrawn at home, and expressed a need to be left alone. In addition, Student stayed away from home for long periods of time.

7. Mother, who was a registered nurse, also provided testimony at hearing. Mother explained that in middle school, Student began telling her that he "just didn't feel right," and he often seemed frustrated. Also, Student had become more secretive.

8. Student, who provided testimony at hearing, explained that he felt angrier in eighth grade than in previous years, but he mostly expressed his anger outside of school, and was respectful to his teachers. He wasn't always respectful to campus supervisors, however, because he felt their main job was to get students in trouble.

TESORO HIGH SCHOOL

9. In September 2008, Student began ninth grade at District's Tesoro High School (THS), where he enrolled in courses designed to meet the admission requirements of the University of California. Just prior to his enrollment, Mother completed a student information card which included Mother's signature acknowledging that District had provided her with parental notification requirements. Specifically, District provided Parents with a 2008 parent information guide, which included information regarding District's special education programs. The guide explained District's goal of identifying and providing FAPE to students with special needs, and encouraged parents to contact the school principal should they feel their child needed to be assessed for special education.

10. Student felt the transition from eighth grade to ninth grade was difficult, because the school was bigger, and contained more people. In addition, he felt there was a lot of social pressure at the school, and found the subjects harder. He felt very anxious and completely misunderstood.

11. At the beginning of the school year, Deputy Christensen held a seminar for THS parents entitled "Is Your Child At Risk?" The seminar addressed current drug trends. Mother, who attended the seminar, felt it was informative. Consequently, Mother developed a rapport with Deputy Christensen, who periodically called her stating that he suspected Student had engaged in inappropriate behavior of some kind, including possible drug use, but could not prove anything. Specifically, on several occasions, Deputy Christensen had taken Student's cell phone and looked through Student's contact list and texts to determine whether Student had associated with any individuals engaged in any illegal activity. At hearing, Student explained that Deputy Christensen had summoned him to his office about one or two times a month, where Deputy

Christensen talked to him about drugs and other illegal activity, and sometimes searched him for drugs.

12. Mother began suspecting Student of using drugs during ninth grade, and consequently tested him periodically for drugs. Although the drug tests always yielded a negative result, Student confessed to Mother that he had been smoking marijuana because it made him feel better. At hearing, Student advised that he smoked marijuana three or four times a month, mainly on weekends.

13. Deputy Christensen, who provided testimony at hearing, had been a school resource officer since the 2006-2007 school year. Deputy Christensen explained that he has never been employed by District, but rather by the Orange County Sheriff's Department. He served schools other than THS, but THS was the only high school he served. He did not discipline students, as that was left for District's administration, but assisted when requested to do so. As a school resource officer, Deputy Christensen gave presentations two to three times a year to help parents recognize the signs of drug use. He also gave presentations regarding teen driving. In addition, he taught the regional occupational program (ROP) for four or five years, and was named school resource officer of the year in 2009. Deputy Christensen recalled Student hanging out with "the stoners" on campus (i.e., students who used marijuana and cigarettes), and he looked like a typical "skater kid." Deputy Christensen did not have any independent recollection of how many times he dealt with Student during his ninth grade year, and did not recall summoning him from class to question him about drug use; however, he conceded it was possible. He remembered Student as a happy kid who was fun to be around, and who was not abrasive.

14. Student's six-week progress report for the fall semester of the 2008-2009 school year, issued in October 2008, indicated that Student received a grade of "B-" in

English 1, Spanish 1, and in his College & Career class; "C+" in Biology and Physical Education (PE); and a grade of "C" in Algebra 1B.

15. On October 16, 2008, Student's PE teacher, Vicki Pillar, caught Student copying another student's Spanish homework during her PE class. THS had an academic integrity policy which prohibited a number of actions, including cheating, plagiarism, and copying the work of other students. At hearing, Student advised that he often copied homework from friends. When Ms. Pillar confronted Student and advised him that he was engaged in a form of cheating, Student "kind of laughed" and continued copying the Spanish homework. Ms. Pillar asked Student not to engage in such conduct in her class. Thereafter, Ms. Pillar sent an email to Parents, as well as to THS's assistant principal, Steve Rim, advising of the incident. After receiving Ms. Pillar's email, Mr. Rim, held a conference with Student, and ordered Student to attend Saturday School, which was a four-hour detention held at the school, where students were required to complete certain behavioral assignments, school beautification projects, or other assigned tasks.

16. Father explained that Student's behaviors at home became worse during his first semester of ninth grade. His grades were not as good as they could have been, which concerned Father, as Father had often stressed the importance of having good grades in order to gain admission to college, and generally found unacceptable all grades below a "B." Student was also becoming more argumentative and defiant at home. Specifically, he would become frustrated and angry, would scream, cry, and hit himself. Consequently, Parents sent Student to Dr. Merrill Powers for weekly therapy sessions. However, Parents subsequently became frustrated with Dr. Powers, as they felt that Dr. Powers failed to provide them with feedback concerning Student's therapy. As a result, Parents withdrew Student from Dr. Powers' care, and sought a new therapist for Student.

17. Student's twelve-week progress report for the fall semester of the 2008-2009 school year, issued in December 2008, indicated that Student received a grade of "B" in English 1; "B-" in his College & Career class; "C+" in Spanish 1; "C" in Algebra 1B; "D" in Biology; and an "F" in PE. At hearing, Student explained that he received a "D" in Biology because he often slept during class or put his head down on his desk, and did not participate in class. However, he turned in his homework, and his class work.

18. When Father questioned Student about why Student had received an "F" in PE, Student said his teacher, Ms. Pillar, was a "bitch." Student often failed to "dress out" for her class. At hearing, Ms. Pillar explained that although she could not recall why Student received an "F", generally, when a pupil failed her class, it was usually due to a student's excessive absences, excessive failures to "dress out", or excessive failures to participate.

19. At hearing, Student explained that at this point, he knew his grades had dropped, and he knew he was not doing well. However, school was not a priority anymore, and he was not motivated to do his work or participate in class. He did not want to be at school, would sometimes put his head down on his desk, and "kind of gave up" on himself.

20. On December 2, 2008, Student received a warning for using his cell phone during class. District recorded the incident in Student's discipline log.

21. Student's semester report card for the fall semester of the 2008-2009 school year, indicated that Student received a grade of "B-" in Spanish 1, and in his College & Career class; "C+" in English 1; "C" in Algebra 1B; "C-" in Biology; and an "F" in PE. Student earned a 2.40 grade point average for the fall semester of the 2008-2009 school year.

22. Beginning in January 2009, Mother felt more threatened by Student, because Student had grown physically, and had invaded her space as a form of

intimidation. In addition, Student had been mean to her, his sister, and to Father. Also, Parents had to call the Sherriff's Department to their house because Student had punched holes in the walls, and had yelled and sworn at them. Thereafter, Student began receiving therapy from a new therapist.

23. Student's six-week progress report for the spring semester of the 2008-2009 school year, indicated that Student received a grade of "A-" in English 1 and in PE; "B+" in Health; "C" in Algebra 1B; "D+" in Biology; and a "D" in Spanish 1. At hearing, Student explained that he received an "A-" in PE because he had a different teacher who engaged the class in indoor activities such as basketball and badminton, which were activities Student enjoyed, as opposed to activities like stretching and running, which Ms. Pillar required her class to do. However, Student advised that in Spanish, he received a "D" because he slept in class, did not participate, and did not always do his homework.

24. On January 27, 2009, Student failed to attend a class and was deemed truant. As a result, on February 2, 2009, Mr. Rim ordered Student to Saturday School. The truancy rate for THS for the 2008-2009 school year was 9.99 percent. Specifically, of the 2,733 students enrolled at THS during the 2008-2009 school year, 273 of them were truant.

25. In March 2009, Student advised Mother that his friend, who had attention deficit hyperactivity disorder (ADHD), had given Student some of his medication (i.e., Ritalin). Student reported to Mother that the Ritalin helped Student feel better. Mother then became concerned that Student could have ADHD. Mother emailed Student's pediatrician, Dr. Michael Shannon, and advised him that Student had trouble concentrating. Dr. Shannon then prescribed Concerta to help Student's concentration, and then told Mother to ask Student's teachers to observe Student at school to see how the Concerta was working.

26. Thereafter, Mother advised Student's biology teacher, Steve Cogan, that Student had begun taking Concerta. On March 24, 2009, Father sent a follow-up email to Mr. Cogan, reminding him Student had been taking Concerta to help him concentrate and focus better in school, and requested Mr. Cogan to advise Parents how Student was doing. Mr. Cogan, who had been a science teacher for 15 years, 11 of those with District, explained at hearing that he remembered Student's name, but not his performance. He also did not remember Student taking Concerta in his class, and did not remember the email. However, he would not have referred a student for special education solely due to taking medication. He would have looked at multiple factors, such as certain behaviors like inattention, impulsivity, and disruptions.

27. In April 2009, Student advised Mother that the Concerta was not working, as he felt no different, and that it did nothing to improve his concentration.

28. Student's twelve-week progress report for the spring semester of the 2008-2009 school year, indicated that Student received a grade of "A" in PE; "B" in English 1; "B-" in Health; "C+" in Algebra 1B and in Biology; and a "D" in Spanish 1. Student received an "S" (i.e., satisfactory) in citizenship in all of these classes. Student's health teacher, John Gipe, who was the department chair for health and PE, and who had been employed with the District for 29 years, explained at hearing that he neither had any specific recollection of Student, nor recalled any incidents of Student displaying any inappropriate behavior; however, given Student's citizenship grade of "S" in his class, Student was not a behavior problem.

29. On April 28, 2009, Student's health class had a substitute teacher. As such, a number of students in the class, including Student, began misbehaving by throwing paper. This misbehavior escalated when a classmate threw a paperback book at another classmate. Student, in turn, threw two hardback books at the classmate who had thrown the paperback book. One of the textbooks hit the classmate in the mouth and bloodied

his lip. District did not record the incident in Student's discipline log. At hearing, Student advised that he did not remember the textbook incident.

30. Mr. Rim, who investigated the book-throwing incident, provided testimony at hearing. Mr. Rim has been the assistant principal at THS for six years, and had been a teacher with District for 15 years. Prior, he was an assistant principal for two years with a different school district, where he also taught math for 13 years, and was a counselor for three to four years. He has a bachelor's degree and a master's degree in education, and also holds pupil personnel services and administrative credentials. As an assistant principal with District, his job duties include overseeing the PE and health departments, office staff, and addressing student attendance and discipline issues. At hearing, Mr. Rim explained that during the course of his investigation, he had a conference with Student, and interviewed other students in the class. Mr. Rim discovered that the students had been engaged in horseplay during class, and concluded that Student did not throw the book with the intention of hurting anybody. As such, Mr. Rim determined that, other than having a discussion with Parents, he did not need to issue Student any consequences or log anything into the discipline log.

31. On or about May 6, 2009, Student sold codeine pills to a classmate, who overdosed and had to be rushed to the hospital. Student had received the codeine pills from another classmate who had stolen them from his parents' medicine cabinet. Student and classmate entered into an agreement that Student would sell the pills, and the two would split the profits between them. On the afternoon of May 6, 2009, Deputy Christensen met with Student and Mother, and charged Student with possession of a controlled substance with intent to sell.

32. Immediately thereafter, Student and Mother met with Mr. Rim, who issued a five-day home suspension. Mother explained to Mr. Rim that she did not want Student home unsupervised. Consequently, Mr. Rim agreed to permit Student to serve his home

suspension at school, but prohibited him from attending classes during that period. Instead, Student would serve his suspension in a detention room or outside of the principal's office. Mr. Rim also advised that he would be making a recommendation that Student be expelled from District, as Student's presence at THS caused a continuing threat to the well-being of the other students on campus. In addition, Mr. Rim explained that he would be requesting that Student's suspension be extended pending the outcome of the expulsion proceedings. District recorded the incident in Student's discipline log. At hearing, Mr. Rim, who was familiar with the "child find" obligation in special education law, advised that a discipline issue, such as one associated with drugs, would not have, in his opinion, triggered child find, but would have rather triggered that Student could have a drug problem unrelated to a disability.

33. On the evening of Friday, May 8, 2009, two days after the codeine pill incident, Student expressed to Parents that he wanted to go out to hang out with his friends. Parents, who had previously grounded Student, reminded him of his punishment, and told him he would not be permitted to leave the house. Student got upset, and started hitting himself in the head and face. He also threatened to kill himself if Parents would not let him leave, used a lot of profanity, and threw sofa pillows at Father. In addition, Student pushed Father onto the sofa twice, and told his Father to hit him. He also punched a hole in the hallway wall. Later that evening, Parents took Student to the hospital at the University of California at Irvine (UCI) to place Student on a psychiatric hold.

UCI HOSPITALIZATION

34. In the early morning of May 9, 2009, Father voluntarily admitted Student to the UCI Neuropsychiatric Center for mental health treatment, because he felt that Student posed a danger to himself and others. UCI performed blood tests of Student to screen for drugs. The tests revealed no evidence of drugs, but did show that Student's

thyroid was underactive. Consequently, UCI diagnosed Student with hypothyroidism, which was a condition denoting a deficiency of the thyroid hormone.

35. Dr. Gail Fernandez, who was a psychiatrist at UCI, testified at hearing. Dr. Fernandez received her bachelor's degree in psychology and biology in 1986 and 1987 from UCI, respectively, and received her doctorate in medicine in 1991 from Creighton University School of Medicine in Omaha, Nebraska. Thereafter, she completed her general psychiatry residency in 1994, and her child psychiatry fellowship in 1996. She is a board certified and published psychiatrist, and, since 1996, has served at UCI as an associate clinical professor and as a training director, where she trains child psychiatry fellows, as well as treats children and adolescents. She is the head of the treatment team at UCI, which includes two child psychiatry fellows, a case manager, a social worker, nursing staff, medical students, occupational therapists, and music therapists. At hearing, Dr. Fernandez explained that many individuals with hypothyroidism can suffer from physical and emotional problems. Specifically, individuals with low thyroid function can be lethargic, depressed, irritable, and can have low energy. Dr. Fernandez, who treated Student, found Student's thyroid function to be eight times lower than normal.

36. UCI also conducted a psychiatric evaluation of Student, during which Student reported that he had had a long history of depression going back for "years." Student attributed depression to his two to three year history of using drugs, such as marijuana, Xanax, and hydrocodone. Student also stated he had experimented with ecstasy, cocaine, and heroin. At hearing, Student explained that on one occasion, he exaggerated to one of the UCI doctors the amount and the type of drugs he used, because he felt UCI would then provide him with more help. Student also reported that his drug use was secondary to his inability to otherwise control his mood or get his motivation to a level that allowed him to function. Student advised the assessor that before he started using drugs, his consistent depression manifested itself in a lack of

pleasure, a lack of motivation, decreased energy, decreased concentration, and sleep disturbance. In addition, Student reported becoming irritable easily, and having episodes of mood swings a few times a week, which he described from "being fine to being angry and breaking objects" within a span of seconds. Student advised that on the night of the argument with Parents, he wanted to hurt them and himself.

37. UCI diagnosed Student with polysubstance abuse, major depressive disorder, Cluster B features (i.e, features of dramatic, emotional, or erratic disorders), hypothyroidism, difficulty in social, emotional, and occupational functioning. A functional global assessment indicated that Student had serious impairment of communication or judgment.

38. During the course of his hospitalization, Student was minimally motivated for treatment, and blamed others around him, including Parents, for not feeling as good as he felt while using drugs. Student also admitted that he felt that if he left the hospital and got into a verbal altercation with his family, he would try to commit suicide. He continued to have this feeling throughout much of his hospitalization.

39. On May 12, 2009, during Student's hospitalization, Parents retained the services of Paula Rudy, who was an educational consultant, to assist them in developing and implementing a strategic educational plan for Student. Specifically, Parents hired Ms. Rudy to help them find a suitable placement for Student. Mother found Ms. Rudy through a recommendation she received from another parent who had placed her child in an out of state facility. Mother had received this parent's telephone number from Deputy Christensen, who provided the number after Mother and Deputy Christensen had discussed concerns about Student's potential drug use. Parents paid Ms. Rudy \$4,200.

40. Also on May 12, 2009, Parents met with Mike Beekman, who was District's Executive Director of Safety and Student Services administrator, regarding District's

expulsion recommendation. Mr. Beekman, who provided testimony at hearing, has been in his current position since 2006, and has been employed with District for 25 years. His duties include overseeing the health services department, working with student counseling and student discipline, and handling expulsion matters. He generally handles approximately 150 expulsion matters a year. When Mr. Beekman meets with the parents of a student facing expulsion, he expects for the student to attend the meeting as well. When he met with Parents, he recalled that Student was not present. He could neither recall why Student was not there, nor whether Parents advised him that Student had been hospitalized on a psychiatric hold. Mr. Beekman further explained that he was an assistant principal for District from 1999 to 2002, and in that capacity, he attended IEP meetings. Consequently, he was familiar with special education issues, and if he ever suspected a child of a disability, he would have referred the child to the special education department. In that regard, if he had ever suspected Student of a disability, or if Parents had requested a special education assessment, he would have referred Student to the special education department.

41. At these meetings, Mr. Beekman generally explained pertinent education code sections, potential placement for the student, and due process rights as it pertains to the expulsion process. Mr. Beekman advised Parents that District recommended Student for a one year expulsion, and explained that Parents could go to a hearing about the expulsion. Mr. Beekman offered, in the alternative, a stipulated agreement where Parents could voluntarily consent to Student's expulsion from District. Mr. Beekman also provided Parents with an expulsion rehabilitation plan, which included a list of conditions Student would need to meet before any readmission back into District. Mr. Beekman also advised Parents that Student could attend community day school for continued educational services.

42. At the meeting, Parents advised Mr. Beekman that they had hired Ms. Rudy to assist them in finding an appropriate educational placement for Student after his hospitalization. Parents then requested and received a 30-day extension in order to explore educational options, and to ensure no expulsion would occur prior to the end of the school year. Father also wanted to use the time to collect Student's homework that he would need to complete from May through June, so that Student would not fail his ninth grade classes.

43. On May 19, 2009, after ten days of treatment, UCI discharged Student, and issued a discharge summary setting forth Student's diagnoses, as well as a list of prescribed medications. Specifically, UCI prescribed Depakote to address Student's anger and impulse control issues, Wellbutrin to treat Student's depression, and Levothyroxine for his hypothyroidism. There is no evidence that Parents provided District with a copy of the discharge summary or any other UCI records prior to June 10, 2010.

44. Parents' insurance covered much of the cost of Student's UCI hospitalization, but Parents had to pay UCI \$1,450.00 for the portion the insurance company did not pay.

SUWS ADOLESCENT AND YOUTH PROGRAM

45. Pursuant to Ms. Rudy's recommendation, Parents arranged for transport specialists to move Student, at a cost of \$ 2,569.82, from UCI immediately upon his discharge, and transport him to Idaho to participate in the SUWS Adolescent and Youth Program (SUWS). Parents hired the transport service because they did not believe Student would go willingly to SUWS. SUWS was a 28 to 63 day therapeutic outdoor program designed to provide guidance to misdirected at-risk youth. Father explained that the purpose for the SUWS placement was to "reset" Student to get him back in the correct mind-frame for going back to school. SUWS provided camping, hiking, outdoor

skills training, experiential group activities, recreational therapy, and individual and group therapy. The therapeutic component consisted of individual and group therapy sessions, behavior modification strategies, self-care and social skills training, emotional growth exercises, journaling, ropes course activities, and family therapy. Trained instructors or youth counselors, who remained with the youth for 24 hours a day, provided basic counseling, with an emphasis on physical and emotional self-care, social skills training, and volunteer service. In addition, they provided academic study, including physical education, geography, geology, navigation, reading and writing skills, and history. There is no evidence that Parents gave District written notice of their unilateral placement of Student at SUWS.

46. SUWS routinely dealt with individuals with mood disorders, oppositional defiant disorder, anxiety disorder, attention deficit disorder (ADD), ADHD, substance abuse, and specific developmental disorders and learning disabilities. SUWS expressly excluded those who suffered from severe chronic depression, personality disorders, severe eating disorders, psychosis, engaged in physical violence or severe self-harm, or posed a severe suicide risk. Kathryn Rex, who has been the executive director at SUWS for the last nine years, provided testimony at hearing, and explained that between 70 to 82 percent of all youth enrolled at SUWS have abused substances. Although SUWS was not accredited at the time of Student's attendance, the program had a good reputation for success with youth with substance abuse issues, depression issues, and anxiety issues.

47. Upon Student's placement at SUWS, Father contacted Student's teachers at THS, as well as Mr. Rim and his secretary, in an effort to retrieve Student's assignments for the remainder of the school year. Father expressed to the teachers and to Mr. Rim that he wanted Student to complete the THS assignments at SUWS to avoid the loss of course credits at THS, as well as a drop in grades. Despite a promise from Mr.

Rim to help coordinate Student's assignments, Father did not initially receive assignments from Student's teachers, except for his English teacher. Father then enlisted the help of Ms. Rudy to contact Mr. Rim and develop a plan for Student to receive his assignments from THS. Ms. Rudy, with the help of SUWS staff, engaged in several discussions with Mr. Rim about the assignments, which ultimately resulted in Student's receipt of the assignments.

DR. CHILES' PSYCHOLOGICAL EVALUATION

48. While at SUWS, Dr. Jeremy A. Chiles, who was an independent clinical psychologist, conducted a psychological evaluation of Student on May 26, June 1, and June 2, 2009, and prepared a report on June 4, 2009. Dr. Chiles, who testified at hearing, has been a licensed psychologist in Utah since 1999, in Idaho since 2004, and in Oregon since 2008. He received his bachelor's degree in psychology in 1993 from the University of Utah, and his doctorate in clinical psychology in 1998 from Brigham Young University. He specializes in the psychological testing and assessment of children, adolescents, and adults. In addition to assessing and diagnosing behavioral and emotional disorders, his practice also includes identifying learning and developmental disorders, such as processing deficits, various forms of dyslexia, Asperger's syndrome, and non-verbal learning disorders. He has never worked as a school psychologist.

49. Dr. Chiles explained that the purpose of evaluating Student was to get a "snapshot" of where Student was then regarding his mental and emotional state, and to identify any potential mental illness, behavioral concerns, relationship difficulties, and substance abuse. The evaluation was also designed to identify the origins of Student's depressive symptoms such as potential thyroid problems and environmental factors, as well as identify the potential for learning disorders. Dr. Chiles, in the course of his evaluation, interviewed Student, Parents, Student's field supervisor at SUWS, and Ms. Rudy, and reviewed Student's mental health records, as well as the SUWS application

form. Dr. Chiles did not request or review any of Student's school records, but rather gathered history about school from his interviews with Student and Parents. Dr. Chiles also administered the following tests: (1) Minnesota Multiphasic Personality Inventory – Adolescent Edition (MMPI-A); (2) Millon Adolescent Clinical Inventory (MACI); (3) Rorschach Inkblot Test; (4) Sentence Completion Test; (5) Substance Abuse Subtle Screening Instrument – Adolescent (SASSI-A); (6) Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV); and (7) Woodcock-Johnson Tests of Achievement – Third Edition (WJ-III).

50. During Dr. Chiles' interview of Student, Student advised him that he was not sure why his Parents placed him at SUWS, but did admit that it could have been for his drug use, or his problems with his mood and depression. Student also advised that he was angry a lot, hit himself, punched holes in walls, threatened to kill himself and other people, and cut himself superficially on his arm and thigh with a razorblade. He explained that he had been having these problems with anger, depression, and drug use for the past three to four years, but that these problems became more intense within the last two years, when he was in middle school. Specifically, Student reported that he first began experimenting with drugs when he was 13 years old. He smoked cigarettes and drank alcohol periodically, and smoked marijuana once every couple of weeks. By age 14, he was smoking marijuana once a week, and over the last couple of months, he smoked it a couple of times a week. There were some weeks that he used more marijuana than others, and reported that he smoked heroin once when he was 15 years old. He also used cocaine once, and ecstasy twice. Student also reported that he abused prescription drugs "off and on" from the age of 13 to the time of his placement. In addition to using drugs, he sold them as well. Specifically, he stole and sold Mother's prescription drugs.

51. Student also shared that he often felt anxious, felt worried about messing up in a way that would affect his whole life, and had test anxiety. Student reported that school was a challenge because of his emotional problems. In addition, Student advised that Father drank a lot of alcohol, that Parents argued often, that his Parents slept in separate rooms, and stayed together only because of him and his sister. Student reported that he used drugs to cope with his anger and depression. During the interview, Dr. Chiles allowed Student to describe his depression from his perspective, but did not specifically ask Student whether he felt depressed at school. Therefore, he explained, he did not know whether Student had been manifesting depression at school. Overall, Dr. Chiles felt Student had been honest in his responses to Dr. Chiles' questions, as there was nothing Student could gain from lying to him. However, at hearing, Student advised that he exaggerated about Father's drinking and Parents' marital problems.

52. When Dr. Chiles reviewed the SUWS application form completed by Parents, as well as interviewed Parents, he learned that they made the decision to place Student out of the home because of his increased drug use, especially smoking or eating marijuana, his expulsion from school, his problems with anger management, and his threats to hurt himself and others in the family. Parents reported that Student isolated himself often, seemed depressed more days than not, felt overwhelmed and stressed out by Parents, and often lashed out at Parents in anger. Student's pattern was to become very emotional, yell, and cry, which typically occurred when Parents did not let him have his way. Student wanted Parents to trust him, even though Student often lied to them. In fact, Student had told them lies from when he was a small child, but his lies increased over the last three to four years. In addition, Parents reported that Student had been cited two years prior for smoking cigarettes, and one year prior for violating the city's curfew.

53. Parents also reported on the SUWS application form that Student was a fun-loving child until about the age of 13, when Student entered puberty, and started to have mood swings and a negative attitude. He began dressing in ripped jeans and black shirts, and stopped spending time with neighborhood friends with whom he had gotten along well. Instead, Student started hanging out with the "drug group," and behaved as though it was more important for him to be "cool" in front of his friends, than to put in a solid effort towards school. Parents anticipated Student's placement at SUWS would help him learn skills to stop using drugs, to focus interests on positive activities and behaviors, to learn skills to control his anger, to better manage disappointment, to improve his concentration, to perform better in school, and to help him experience a sense of success and accomplishment in his life.

54. Dr. Chiles administered the WISC-IV to assess Student's intellectual and cognitive abilities. Student's full scale intelligence quotient (IQ) score was 114 (82nd percentile), and considered in the high average range. His WISC-IV index scores showed that he scored in the average range (50th percentile) in verbal comprehension, in the superior range (92nd percentile) in perceptual verbal reasoning, in the average range (42nd percentile) in working memory, and in the superior range (96th percentile) in processing speed.

55. He administered the WJ-III to assess Student's academic abilities. Student's academic skills score was 108 (70th percentile), which was the grade equivalent of 11.2. His academic fluency score was 113 (81st percentile), which was the grade equivalent of 12.8. Dr. Chiles found Student's oral language abilities in the average range, overall reading abilities in the high average range, overall mathematic abilities in the upper end of the average range, and his overall writing abilities in the high average to superior range.

56. Dr. Chiles determined that Student's overall IQ and achievement test results indicated that Student's abilities in reading, writing, and math were in the average to above average range. Dr. Chiles found that, although Student advised him prior to the testing that he felt nervous, worried, and anxious about his performance, it seemed to have the effect of improving his performance rather than adversely affecting it. His processing speed was a relative strength, as Student typically worked quickly and efficiently on simple tasks. However, Student evidenced an overall relative weakness in his short-term memory abilities, which affected Student's ability to transfer information from short-term to long-term memory. As such, Dr. Chiles found that Student needed to study often and employ memory techniques in order to effectively store academic information and other knowledge to long-term memory. In addition, he found that any past poor test performances at school were likely related to Student's challenges involving short-term memory, coupled by him only putting minimal effort into studying and preparing for tests. Dr. Chiles found that Student did not evidence any learning disorders in core academic subjects, and did not evidence deficits suggestive of ADHD.

57. In order to evaluate Student's personality dynamics and the potential for mental illness, Dr. Chiles administered the MACI, the MMPI-A, a Sentence Completion Test, and the Rorschach Inkblot Test. In the area of personality patterns on the MACI, which pertained to relatively enduring and pervasive character traits that underlie personal and interpersonal functioning, Dr. Chiles found that Student had experienced dejected and gloomy moods for several years, tended to be sad and experienced self-doubt, and low self-worth more days than not. Dr. Chiles also found that Student was likely to experience a pessimistic outlook on life, and to be prone to feeling guilty and remorseful. Dr. Chiles noted that Student may be outgoing and pleasant one minute, while being hostile and irritable the next. He also found that Student often felt confused about his moodiness, and unable to control his moods for very long.

58. In the area of expressed concerns on the MACI, which pertained to Student's subjective view of himself and others, Dr. Chiles found Student presented as directionless, and unclear about the kind of person he would like to be. Student found little to admire in himself, and feared he would fall short of what he aspired to be, and, as a result, he usually gave up before making an effort to overcome challenges. In the clinical syndrome subsets of the MACI, the test results revealed that Student experienced a sense of nervousness and apprehensiveness about the future, had become increasingly withdrawn, lacked confidence, and had experienced diminished feelings of adequacy and attractiveness.

59. The results of the MMPI-A revealed that Student felt a general sense of dissatisfaction in his life, and lacked the perseverance to push through to accomplish meaningful and challenging activities. Student also tended to be impulsive, and had underdeveloped problem solving abilities. He tended to rely on acting out as a primary defense mechanism, and had a pattern of experiencing difficulty in managing his temper and expressing his anger in constructive ways. Student had been willing to engage in criminal activity, which evidenced a lack of integrity, and a willingness to violate the rights of others to meet his personal needs and wants. Also, Student's self-destructive behavior and poor coping skills manifested in Student engaging in self-harm. Student lacked respect for authority. His pattern, however, was passive toward his defiance of authority figures outside the home. Specifically, he typically manipulated others by deceiving them into believing he would comply, but ultimately failed to do what was asked of him. The results also showed that Student gravitated toward a negative group of peers that were interested in rule violation and stimulus seeking. These individuals held negative attitudes toward authority, and demonstrated overall bad judgment.

60. The results of the Sentence Completion Test revealed Student's perspectives on school. Specifically, Student stated, "My biggest trouble at school is the work and tests/quizzes they give me." Student also said, "In school, I act cool and chill and sweet and I try to follow the rules." He also said, "If I fail at school, it is when my friends or problems bring me down, and I don't do what's expected."

61. The results of the Rorschach Inkblot Test indicated that Student had an avoidant style, arrived at decisions without having giving them much thought, and selected courses of action in which he had little emotional investment. Dr. Chiles found that because of Student's narrow frame of reference, Student was likely to have little tolerance for uncertainty and ambiguity, and favor simple solutions even to complex problems. Dr. Chiles found that Student demonstrated impairment of his reality testing abilities, evidenced by his misperception of events and forming mistaken impressions of people and what their actions may signify. If Student was confronted with ordinary levels of stress that most people could manage without difficulty, Student would be at risk for experiencing uncharacteristic episodes of subjectively felt distress, limited frustration tolerance, and poor impulse control. In addition, he had an aversion to emotionality that could limit his social attractiveness, and place him at risk for being socially and emotionally withdrawn. Student's responses also evidenced oppositional tendencies that were likely to be associated with underlying feelings of anger and resentment toward people or the world in general. Finally, the results of the Rorschach Inkblot Test revealed that Student lacked self-awareness and an appreciation for the impact he had on others, and had a limited capacity to examine himself in a critical fashion and then modify his behavior appropriately.

62. In order to evaluate Student's alcohol and other drug use, Dr. Chiles administered the SASSI-A, which showed that Student's pattern of marijuana use was consistent with his level of dependence. The result further indicated that Student tended

to be detached from feelings and to have relatively little insight into the basis and causes of his problems.

63. Dr. Chiles' diagnostic determinations established that Student's acting out behaviors bordered on conduct disorder, and because of his exhibitions of defiance of authority, drug use, and disinterest in school, Student also suffered from Oppositional Defiant Disorder. In addition, Dr. Chiles determined that Student's anger, irritability, depressed mood, nervousness, worry, avoidance of difficult or challenging activities, and lack of self confidence were consistent with a Depressive Disorder Not Otherwise Specified (NOS), and an Anxiety Disorder NOS. Dr. Chiles did not believe that Student suffered from Major Depressive Disorder as diagnosed by UCI, as there were not enough episodes over an extended period of time over multiple settings to warrant such a diagnosis. Dr. Chiles believed that Student's depression would have affected his academic functioning, because depressed people generally have less mental energy to put into school work, and Student's cognitive and academic testing demonstrated that Student was capable of earning A's and B's. However, Dr. Chiles conceded that it was not automatic that a student with depression or anxiety would not make academic progress.

64. Dr. Chiles also determined that Student was overwhelmed when taking exams at school because he had not prepared adequately, which led him to feel anxious and frustrated. Although these issues, as well as his challenges with his short term memory, did not meet the criteria for a learning disorder, Student would require the development of a number of skills, including learning mnemonic devices in an effort to improve the quality of his memory. Dr. Chiles also found that Student did not evidence symptoms consistent with a diagnosis of ADHD, and concluded that his difficulties with attention and concentration were related to his emotional problems, laziness, and drug use. At hearing, Dr. Chiles explained that he considered Student's depression and

anxiety as primary factors, and his drug use as a secondary factor. In other words, Dr. Chiles concluded that the anxiety and depression led to Student's drug use, as opposed to his drug use leading to his anxiety and depression.

65. Although Dr. Chiles acknowledged that stressful factors, such as his classmate's overdose incident and Student having to leave his girlfriend to attend SUWS, could have impacted Student, he explained that the questions on the test were geared to assess behavior over an extended period of time, and not to just one or two stressful incidents.

66. Dr. Chiles made a number of recommendations, including placement at a residential center or at a therapeutic boarding school following his stay at SUWS. He recommended that the placement provide ongoing supervision and structure to ensure that Student remained sober, made good choices, addressed family problems, developed a healthy identity, and improve his academic performance. In addition, he recommended that the placement provide individual, group, and family therapy, as well as provide an opportunity for Student to participate in substance dependence treatment, such as a 12-step program or other self-help groups.

67. Parents paid \$1,600 for Dr. Chiles' assessment. There is no evidence that Parents gave District a copy of Dr. Chiles' assessment report prior to June 10, 2010.

68. On June 18, 2009, while Student was still at SUWS, Parents and Mr. Beekman entered into a stipulated agreement that Parents would voluntarily consent to Student's expulsion from District commencing on July 13, 2009, and would waive their right to a formal expulsion hearing. Also around this time, District issued Student's semester report card for the spring semester of the 2008-2009 school year at THS, issued in June 2009, indicating that Student received a grade of "C" in English 1 and in Health; "D+" in Spanish 1; "D-" in Algebra 1B; and an "F" in Biology and in PE. Student earned a 1.20 grade point average for the spring semester of the 2008-2009 school year.

Student's decline in grades resulted from Student's absence from THS, and his consequential failure to complete the coursework.

69. Student remained at SUWS for a total of 37 days, until his graduation on June 25, 2009. Student did not have an opportunity to complete his THS assignments, because Student completed most of the SUWS program in the wilderness, where he was required to engage in rigorous and lengthy physical activities.

70. SUWS provided Parents with a discharge summary, which noted that prior to entering SUWS, Student had exhibited stealing, lying, manipulation, defiance, authority and family conflict, physical and verbal aggression, substance dependence, negative peer association, inappropriate behavior in school, mood swings, symptoms of depression, anxiety, anger and communication difficulty. The discharge summary also noted that Student initially struggled with focus, intensive and obsessive preoccupations about situations outside of his control, issues of entitlement and consistent motivation. Later, Student began gaining personal insights, which helped him see patterns of addictive thinking, victim stance, anger, resentment, suppression of emotion and related negative consequences in his life and relationships. The discharge summary indicated that Student would need education and support in understanding chemical dependency and developing an abstinence-based lifestyle using healthy coping strategies to address negative thoughts and feelings. He would also need consistency, structure, and ongoing support to continue to identify his negative coping patterns and implement healthier strategies to deal with his emotions. With continued support, Student would gain a better understanding of recovery and the skills required to cope effectively with his anxiety, depression, and chemical dependency. He would need ongoing support to continue to practice his new openness and healthy skills.

71. The discharge summary then included a recommendation that Student attend the Monarch School, as it offered a highly structured, supportive, therapeutic

program, and provided individual counseling, group experiential therapy, weekly family counseling, family experiential workshops and activities, and a group learning environment geared specifically toward students with anxiety, and difficulty sustaining attention and effort. The discharge summary also included a recommendation that Student remain under the care and supervision of a psychiatrist who could help Student manage problematic symptoms, including anxiety and depression, through medication management deemed appropriate by his treatment team. There is no evidence that, prior to June 10, 2010, Parents provided District with the discharge summary or any other information concerning Student's mental health status from SUWS.

72. Parents paid SUWS a total of \$14,745.10.

MONARCH SCHOOL

73. Prior to Student's discharge from SUWS, Ms. Rudy recommended to Parents that Student attend the Monarch School (Monarch), which was a licensed and accredited therapeutic boarding school in Montana. Monarch was a 12-18 month program for students who emotionally and/or behaviorally struggled to live healthy lives. Monarch required each student to have a personal therapist and to engage that therapist for a minimum of two hours per month. The therapy was provided by professionals employed by the Center for Excellence (Center), which had a contract to provide therapeutic services to students and their parents involved with Monarch. Families contracted with Center for the individual (for students and/or parents) and family therapy provided month to month, either face to face or via telephone conferencing. The number of sessions in which each family engaged varied, but all families employed these services. Each student was also required to engage in six hours of group therapy per week with their peers and staff. There were limited distractions at Monarch, as it prohibited the use of cell phones and tablet computers.

74. Father visited Monarch approximately one week prior to Student's release from SUWS, which cost him \$484.40 for airline tickets. Father also explored two other boarding schools in two other states. Father then determined that Monarch was the appropriate placement for Student. Consequently, immediately following Student's discharge from SUWS, Father escorted Student directly to Monarch. The airline tickets, car rental, and hotel cost \$558.40, \$138.63, and \$117.74, respectively. There is no evidence that Parents gave District written notice of their unilateral placement of Student at Monarch.

75. Monarch's academic director, Jamie Jones, provided testimony at hearing. Ms. Jones has been Monarch's academic director for nearly three years. Her duties included supervising full-time and part-time teaching staff, managing academic class scheduling, facilitating communication between academic and therapeutic staff, using neuropsychological testing to determine strategies to assist struggling students, communicating with parents and educational consultants regarding academic issues, evaluating transcripts, and creating academic course outlines for all new enrollments. Prior, she had been a math teacher at Monarch for three years. She received her bachelor's degree in mathematics and secondary education in 1996 from Colorado Christian University, and her master's degree in educational leadership in 2010 from the University of Idaho.

76. Ms. Jones explained that she was intimately involved in the admission process to determine whether a student was academically appropriate for Monarch. The kind of students that were not appropriate for Monarch were those who had an IQ lower than 90, significant reading difficulties, autism, or who needed extreme curriculum modifications. Because Monarch had a good college-prep curriculum, Monarch expected all enrollees to be academically ready. In addition, Monarch did not typically admit students who engaged in extreme violence or extreme crimes, because Monarch

was not a lockdown facility. Approximately 50 percent of students at Monarch had abused drugs or alcohol.

77. When Student enrolled at Monarch, Ms. Jones reviewed Student's psychological evaluation report, as well as his transcript from THS, and had no concerns about his ability to handle the curriculum. However, she noted that Student struggled with issues related to depression, anxiety, and past drug use. Ms. Jones explained that 100 percent of the students at Monarch had emotional issues. Approximately one-half to one-third of those had depression and/or anxiety, and approximately 50 percent of the depressed or anxious students used drugs or alcohol.

78. Given Student's level of depression and drug abuse, Student was required to participate in one hour of individual therapy each month with his family counselor, in order to gain proper coping skills to manage his moods and drug abuse. Student was also required to engage with his family in two hours of family therapy per month, in order for the family to work on communication skills, and to identify and change the negative patterns they engaged in together. Additionally, Parents were required to fly to Monarch to have face-to-face meetings with school staff and Student on several occasions before Student could go home for progressively longer home visits.

79. Monarch's academic class sizes were small, approximately seven to ten students per class, so that teachers had the time to engage the students more fully. Student's academic plan at Monarch included retaking PE and Biology, in which he had previously received an "F" at THS, and Algebra 1B, in which he had previously received a "D-". His plan also included college-bound, tenth grade classes, such as English 10, Spanish 2, World History, Humanities, Geometry, English 10B, Integrated Science, U.S. History, Speech and Communication, and Government.

80. On July 13, 2009, while Student was at Monarch, District's Board of Trustees upheld the stipulated agreement that Student be expelled from District for one

calendar year, and advised that District would review Student's matter for possible readmission prior to July 13, 2010. The Board of Trustees noted that in order to meet eligibility requirements for readmission, Student would need to comply with the Expulsion Rehabilitation Plan. The Board of Trustees also referred Student to the Orange County Department of Education Community Day School for continued educational services, should he wish to enroll.

81. Katy Davis, Psy.D., who was a psychologist at Center, assessed Student under the supervision of licensed clinical psychologist, Dr. Douglas Ratelle. Dr. Ratelle, who provided testimony at hearing, received his bachelor's degree in international relations in 1987, and his doctorate in philosophy (counseling psychology) in 1995, from Brigham Young University (Brigham). From 1988 through 1992, Dr. Ratelle worked in Brigham's educational psychological department and conducted extensive research in relaxation training, imagery, performance enhancement, and in EEG and biofeedback applications. He also provided individual therapy and supervised master's level students. While employed at Brigham, he also worked at Ingram & Associates from 1989 to 1990, where he conducted psychoeducational assessments of adolescents and children for local school districts. As a pre-doctoral intern, he provided individual and group therapy for university students at Brigham, as well as provided adult, adolescent, and child therapy in a private practice setting. From 1991 to 1993, he was the primary therapist for personality disordered adolescents and their families at Heritage Residential Treatment Center in Utah, and from 1993 to 1996, he provided intensive individual, group, and family therapy at CEDU Educational Services, Inc. He had a private practice from 1996 to 2002, where he provided individual, family, and marital therapy. From 1988 to the present, Dr. Ratelle has provided consultation for performance enhancement in athletics, business, education, science, technology, and social services. He has been the clinical director at Center since 2000, where his job duties include providing initial treatment

planning, individual, group, and family services, and monthly progress reports for adolescents enrolled at Monarch. He also serves as a supervisor to four other clinicians and four support staff.

82. Under Dr. Ratelle's supervision, Dr. Davis prepared a family services summary concerning Student on July 17, 2009, after reviewing Student's psychological assessment conducted while he attended SUWS, and interviewing Student, Parents, and a SUWS therapist. The family services summary referenced Student's drug use, including Student's admission to the assessor that he tried cocaine and PCP, and noted Student had used drugs as coping mechanisms to address feelings of worthlessness, depression, and anxiety. In addition, the summary noted Student's belief that Parents did not like each other because they fought often, and only appeared to be staying together for the sake of Student and his younger sister. The family summary included recommendations that Student work on identifying reasons for his drug use, learning how to establish and maintain positive peer relationships through appropriate boundaries and honesty, building trust with his family, building a healthy relationship with his sister, and learning to manage his school work responsibly and proactively on his own.

83. At hearing, Dr. Ratelle noted that, consistent with Student's issues, the mental issues of a typical Monarch student were significant, but not extreme. There were a fair amount of oppositional defiance disorder issues among the students at Monarch, as well as a lot of mood disorders such as depression and anxiety. At least half of the adolescents that came to Monarch had substance abuse problems, which generally stemmed from efforts to either self-medicate or use drugs for social reasons. Dr. Ratelle also explained that students at Monarch who had substance abuse problems also had mental health issues, but they were not drug addicts.

84. In Student's case, Dr. Ratelle found Student, through his conversations with Dr. Davis, to be a poor problem solver, and unprepared for social stresses because

he was a very spoiled child who received material items to help him feel better. As such, when Student started to get older, and because he never had to work through feeling bad, he did not know how to cope with these feelings when growth and hormones surfaced. Consequently, Student used drugs and alcohol to cope with bad feelings, such as anger, depression, anxiety, as well as feelings of inadequacy and low self-esteem. Dr. Ratelle advised that these bad feelings, particularly depression, could, in an academic sense, manifest in a difficulty to concentrate, a tendency to become easily distracted, lack of patience, feelings of agitation and frustration, uneasiness, and embarrassment. However, Dr. Ratelle would avoid making a diagnosis of depression based on a drop in grades, because it is too subjective.

85. On August 31, 2009, Center issued a family service summary that indicated that, in the area of academic development, Student worked hard in his classes and turned in high quality work, but did not participate in classes as much as he could, and allowed his past negative choices to impact his ability to stay focused and remain on task in some classes. In the area of physical development, Student recognized the extent to which he physically depended on drugs, but remained transfixed on his past drug use, and the physical sensations the drugs provided. In the area of emotional development, Student worked hard on exposing his drug thinking and his constant desire to feel intoxicated, but always looked for a quick-fix and escape. In the area of family relations, Student had taken accountability for his actions with Parents, but had not fully taken his family into consideration when letting his impulsive choices impact Parents' trust. In the area of peer relations, Student connected with a few students at the school, but had a history of keeping unhealthy secrets and not holding his peers accountable.

86. In September 2009, Parents flew to Montana for a mandatory visit, at a cost of \$580.84 for round-trip tickets. The hotel cost \$349.83, and the car rental, gasoline, and parking, cost \$106.34, \$27.92, and \$80.00, respectively.

87. In November 2009, Mother, Father, and Student's younger sister flew to Montana for Student's family visit, at a cost of \$964.20. While there, Student's family rented a car at a cost of \$98.43, and incurred hotel expenses in the amount of \$449.52.

88. Student's grades at Monarch for the Fall semester of the 2009-2010 school year, issued in January 2010, showed that he earned an "A+" in Visual Art and in Animal Science, an "A" in Geometry, Music, Journalism, and Outdoor Leadership, an "A-" in Integrated Science, Practical Arts, and in Spanish 2, and a "B" in English 10, Culinary Arts, and in PE. Student earned a 3.80 grade point average at Monarch for the fall semester of the 2009-2010 school year. These class credits were subsequently transferred to THS.

89. In January 2010, Mother, Father, and Student's younger sister flew to Montana for Student's family visit, at a cost of \$399.60. While there, Parents rented a car at a cost of \$366.58.

90. Monarch's program recommended that Student return home for a visit to connect with his family, and to use the skills he learned in the program. In March 2010, Parents flew Student home for a visit. The traveling expenses cost Parents \$302.80.

91. On March 18, 2010, Monarch issued a peer leader quarterly update regarding Student, and indicated that in the area of academic development, Student gave 100 percent of his effort and was beginning to be a classroom leader, but at times became overwhelmed with the amount of school work he had. In the area of physical development, Student overcame negative thoughts about his physical ability, but his moods, along with physical challenges such as migraine headaches and a virus, inhibited his motivation to be physically active. In the area of emotional development, Student held himself and his peers to a higher level of accountability, but struggled with how

others perceived or judged him, which held him back from being an effective leader. In the area of family relations, Student had been open and forthcoming on his calls with Parents, but struggled with a familiar behavior pattern of wanting to be perfect in the eyes of his family. In the area of peer relations, Student formed some close, connected relationships, but struggled with confronting his peers to hold them accountable.

92. Student's grades at Monarch for the spring semester of the 2009-2010 school year, issued in June 2010, showed that he earned an "A+" in Music, an "A" in Practical Arts, and in English 10, an "A-" in Spanish 2, Integrated Science, and in PE, and a "B" in Geometry. Student earned a 3.83 grade point average at Monarch for the spring semester of the 2009-2010 school year. These class credits were subsequently transferred to THS.

93. At hearing, Dr. Ratelle explained that although he never personally provided any services directly to Student, he understood through his communications with Dr. Davis, that Student made significant progress at Monarch. When Student first started attending Monarch, he was avoidant, "shady", and would not engage. Afterwards, Student was more forthcoming, more engaging, worked on being more open about his opinions and emotions, more interactive, more relaxed, more present, and not so distracted. Dr. Ratelle also shared that Dr. Davis did not recommend special education testing, and advised that he, too, did not generally recommend a child for special education services when leaving Monarch.

94. Student left Monarch's program in June 2010, after a one year stay, and after completing his tenth grade year for the 2009-2010 school year. Parents paid Monarch a total of \$78,519.28 in tuition and expenses, and Center a total of \$3,760.40 for services rendered during Student's stay at Monarch. In addition, Parents paid \$188.40 for an airline ticket for Student to return home.

95. There is no evidence that, prior to June 10, 2010, Parents gave District a copy of any documents from Monarch or from Center concerning Student's psychiatric status.

RETURN TO THS

96. On June 10, 2010, Parents submitted on Student's behalf a new student enrollment form to THS. On September 6, 2010, Student wrote a letter to Mr. Beekman explaining that he had undergone over a year of rigorous therapy and rehabilitation, and was now mature enough to face the social environment of a public school and the difficulties of a teenage life. On September 7, 2010, District determined that Student completed all the requirements to return to District schools for the fall semester of the 2010-2011 school year. Student returned to THS in September 2010. THS replaced the low or incomplete grades Student earned during the final semester of his ninth grade year with the grades he earned in those classes at Monarch.

DR. PEDRO OLVERA

97. Dr. Pedro Olvera, who is a published and licensed educational psychologist, provided expert testimony for Student. Dr. Pedro Olvera received his bachelor's degree in social science and history in 1999 from San Diego Christian College, his master's degree in education in 2003 from Azusa Pacific University (Azusa), and his doctorate in educational psychology in 2004 from Alliant International University. He holds a professional clear pupil personnel services credential. Since 2007, he has taught courses at Azusa in the areas of school psychology and school counseling. Specifically, he taught classes in multicultural and bilingual assessment and intervention, psychoeducational assessment, child and adolescent development and learning, positive behavior supports, classroom intervention, and in school psychology fieldwork. He has also served on committees at Azusa since 2008 in the areas of assessment,

accountability, accreditation, and other school psychology programs. He has also served as a reviewer on a State of California manual entitled *Referral & Identification of English Learners Suspected of Having a Disability*, as a editorial board advisory member for the California School of Psychologists, as a member of the research committee for the Goldman Research Award, and served as a reviewer for proposals of the Christians on Diversity Academy. Dr. Pedro Olvera has also served on dissertation committees, and has made approximately 15 presentations on subjects such as assessments and school psychology.

98. Since 2010, he and his wife, Dr. Veronica Olvera, have been co-directors of their own private practice called the Neuro-Educational Clinic, where he handles the psychoeducational component of a case, and Dr. Veronica Olvera handles the clinical component of a case. In other words, he conducts comprehensive psychoeducational assessments in conjunction with neuropsychological evaluations conducted by Dr. Veronica Olvera. He also conducts independent educational evaluations (IEE), as well as autism assessments. He has also been employed at the Pediatric Neurodevelopment Institute at Azusa since 2007, where he serves as supervising faculty to doctoral students conducting psychoeducational evaluations to Latino bilingual children, as well as bilingual autism assessments. He also currently serves as a school psychology consultant for the Santa Ana Unified School District (SAUSD) where he specializes in bilingual and monolingual psychoeducational assessments, behavior intervention, and autism assessments. Prior, he served as a bilingual school psychologist for SAUSD from 2003-2007, and served as an intern for SAUSD from 2002-2003. From 1999 to 2000, he worked at Concept 7 Family and Support Treatment Centers as a certification social worker, where he worked with individuals who wanted to be social workers. Prior to going into private practice with Dr. Veronica Olvera, Dr. Pedro Olvera had a private practice with Dr. Mary Jo Lang from 2008-2009, where he conducted assessments.

99. During the course of his career, Dr. Pedro Olvera has conducted approximately 850 assessments, and has participated in approximately 800 individualized educational program (IEP) meetings. He has also conducted IEEs for approximately 15 school districts.

100. Dr. Pedro Olvera reviewed Student's educational and recent mental health records, including Student's progress and report cards, transcripts, discipline logs, UCI hospitalization records, the SUWS application completed by Parents, Dr. Chiles' report, and records related to Student's stay at Monarch. He also interviewed Mother telephonically for approximately 45 to 60 minutes approximately one and one-half weeks prior to hearing, and Student in person for approximately 45 to 60 minutes approximately one week prior to hearing. At hearing, Dr. Pedro Olvera advised that during his interview with Student, Student reported, among other things, that he had begun using drugs on a daily basis beginning the summer following eighth grade, because he felt depressed on a regular basis.

101. Dr. Pedro Olvera had concerns about Student's ninth grade grades. Specifically, Dr. Pedro Olvera noted that in seventh and eighth grade, Student had a grade point average above 3.0. Although Student ended his eighth grade year with a grade point average of 3.14, by the end of the fall semester of his ninth grade year, Student's grade point average had dropped to 2.4, which Dr. Pedro Olvera considered a significant decline. In addition, Dr. Pedro Olvera found Student's "F" in PE troubling, because he had gotten an "A" at the end of his eighth grade year, which had dropped in his ninth grade year to a B-, and then to a D, and then finally an "F" by the end of the fall semester. Moreover, Student's grade point average of 2.4 had dropped to a 1.2 by the end of the spring semester. However, Dr. Pedro Olvera conceded that the rigor of the coursework, drug use, fighting with parents, transitioning to a new and larger school

site, and other external factors could have impacted a student's performance in each individual class.

102. Dr. Pedro Olvera also noted concerns regarding Student's disciplinary history. Specifically, he found significant Student's expulsion for selling prescription drugs, as it denoted a potential substance abuse issue. In addition, he found the book throwing incident to be a very significant event, because he considered it to be a purposeful act to hurt another child with aggression and violence. However, Dr. Pedro Olvera admitted that he did not ask Student specific questions about the textbook incident, namely why he had thrown the book, or any questions about what precipitated the act.

103. Dr. Pedro Olvera found the cheating and truancy incidents concerning, because it involved conduct that was out of the ordinary for Student. Dr. Pedro Olvera concluded that when looking at all of the discipline incidents together, it painted a picture of a student having behavioral outbursts. In his opinion, these outbursts, combined with the simultaneous drop in grades, should have resulted in Student being accessed for special education eligibility, because Student appeared to have emotional issues.

104. Dr. Pedro Olvera also concluded that the fact that Student had been prescribed Concerta, which Parents had advised Student's biology teacher, should have been disseminated to the administration, because it involved a medication designed to control ADD and ADHD symptoms. As such, Dr. Pedro Olvera concluded that Student warranted an assessment to determine whether he was eligible for special education services under the disability category of other health impairment (OHI).

105. Dr. Pedro Olvera also found that Student's drop in grades warranted an assessment to determine whether Student had a specific learning disability. However, on cross-examination, Dr. Pedro Olvera could not offer an explanation as to why Student's

grades had improved in several instances. Specifically, Student, who had received an "F" in PE after the fall semester, received an "A-" and then an "A" in PE for the six and twelve week progress reports of the spring semester, respectively. Also, Student's grade in biology had improved from a "D+" to a "C+" in the twelve week progress report card of the spring semester. In addition, Student's English grade had improved from a "C+" to an "A-" in the six week progress report of the spring semester. Also, Student's Algebra grade had improved from a "C" to a "C+" in the twelve week progress report of the spring semester. Dr. Pedro Olvera then conceded that because Student had improved in some classes, and passed other classes with a C- or better, meant that Student was putting forth effort in his classes.

106. Dr. Pedro Olvera felt that Student should have been assessed prior to his eventual hospitalization, because his behavior and grades warranted an assessment. Notwithstanding this, Dr. Pedro Olvera also considered Student's UCI hospitalization significant, because Student was hospitalized for ten days as a result of his apparent danger to himself and others. He also found significant Student's diagnosis of hypothyroidism, which could have affected his mood (i.e., depression and anxiety), as well as Student's drug use for the purpose of self-medicating. Dr. Pedro Olvera believed that these factors, when taken together, made it more apparent that Student required a special education assessment.

107. Although Dr. Pedro Olvera did not test Student, observe him in a school setting, or speak to any teachers or administrators, he felt that his review of Student's school and medical records, particularly the records from UCI and Dr. Chiles' report, as well as his interviews with Student and Parents, gave him a good snapshot of what was going on with Student at that time. In that regard, Dr. Pedro Olvera believed Student would have qualified for special education under a primary eligibility of OHI due to Student's hypothyroidism, which impacted Student's alertness level because of the

resulting symptoms of depression (i.e., concentration level, attention level, and motivation level). Dr. Pedro Olvera also believed that Student would have qualified for special education under a secondary eligibility of emotional disturbance (ED) because of Student's drop in grades, his reports of anger, his self-hate and self-mutilation, his attraction to drug-using friends, his reported drug use, and his discipline record, because these factors together suggested a pervasive mood of unhappiness over a long period of time, and to a marked degree, which affected Student's ability to effectively participate in an educational setting.

108. Dr. Pedro Olvera suggested an educational program from which Student could have benefitted. Specifically, Dr. Pedro Olvera explained that District should have provided Student with counseling, recommended Student for mental health services, provided resource support to address his drop in grades, and conducted a functional behavior analysis to develop a behavior support plan, because his behaviors had impeded his learning. At hearing, Dr. Pedro Olvera advised that his testimony marked the first time he has testified as an expert witness.

DR. VERONICA OLVERA

109. Dr. Veronica Olvera, who is a published and licensed clinical psychologist, provided expert testimony for Student. Dr. Veronica Olvera received her bachelor's degree from UCI in 2000 where she majored in psychology and social behavior, as well as criminology. She received her master's degree and doctorate from Azusa in 2003 and 2006, respectively, in clinical psychology, with an emphasis in family psychology. She also completed a pre-doctoral internship in correctional/forensic psychology in 2006, and a post-doctoral fellowship in clinical neuropsychology in 2007.

110. Dr. Veronica Olvera currently has a private practice with Dr. Pedro Olvera at the Neuro-Educational Clinic, where they conduct comprehensive "neuro-educational" evaluations, which is a combination of neuropsychological and

psychoeducational assessments for children and adolescents. She also serves as a staff psychologist at Executive Mental Health, Inc., where she conducts comprehensive neuropsychological evaluations for adults and geriatric populations, and assists in private forensic neuropsychological evaluations in medical facilities and collaborates with a multidisciplinary team. Prior, she was a neuropsychological assistant at Ari Kalechstein, PhD, and Associates, where she assisted in private forensic neuropsychological evaluations. She was also a neuropsychology consultant for the Pediatric Neurodevelopmental Institute, where she served as a consultant to students conducting neuropsychological evaluations to children and adolescents in Azusa's pediatric clinic. From 2002 to 2007, Dr. Veronica Olvera completed practicum work, internships, and a post-doctorate fellowship in neuropsychology, forensic psychology, and counseling psychology. Dr. Veronica Olvera also served as a faculty assistant professor, an adjunct professor, a teaching assistant, a peer tutor, and a research assistant at Azusa.

111. At hearing, Dr. Veronica Olvera explained that neuropsychology studies how the brain impacts behavior. A neuropsychological assessment takes into account an individual's medications, substances, neurosis, IQ, memory, visual-spatial abilities, executive functioning, psychomotor dexterity, mood, personality, attention, and all cognitive domains. Neuropsychologists collaborate with medical doctors to see if there are any medical issues that could affect behavior.

112. Since 2002, she has conducted 700 neuropsychological assessments, 35 to 40 percent to children. In her private practice at the Neuro-Educational Clinic, she works with parents, advocates, children, and reviews psychological and medical records. She also attends IEPs with Dr. Pedro Olvera, where she presents the neuropsychological findings of a neuro-educational assessment, and Dr. Pedro Olvera presents his psychoeducational findings. In her capacity as a neuropsychologist, she also makes DSM

diagnoses, which, she explained, could be helpful in looking at a child's emotional state, particularly in the areas of autism, ADHD, and depression. In approximately 80 percent of all the assessments she has conducted, the cases involved depression and anxiety. She has also worked with children who have thyroid problems.

113. Dr. Veronica Olvera interviewed Father for approximately one hour and forty minutes, and Student for approximately one hour. She also reviewed Student's records from UCI, and noted that Student had been diagnosed with hypothyroidism. At hearing, Dr. Veronica Olvera explained that the literature was clear that hypothyroidism can produce depressive symptoms and depression in children. She further explained that whenever there is an endocrinal imbalance in children, it generally results in irritability. Adolescents generally result to self-medication, because they feel different, they feel something is wrong with them, and they feel they cannot control it. Sometimes, these feelings result in truancy, academic problems, oppositional behavior, mood swings, and concentration problems. When she saw that Student had a diagnosis of hypothyroidism, she felt certain that it was the main cause of Student's depression. When left untreated, Dr. Veronica Olvera explained that it could impact behavior, cognitive functioning, and personality. In Student's case, after reviewing his transcripts and discipline records, Dr. Veronica Olvera noted that when Student was in seventh and eighth grade, he was an "A" and "B" student, yet he engaged in bad behavior which seemed out of character given his grades. For example, he refused to follow a campus supervisor's directions, which was a sign of oppositional and noncompliant behavior, which could have resulted from depression.

114. Dr. Veronica Olvera concluded that the ninth grade cheating incident, as well as the textbook incident, demonstrated that Student had lost control and went into a state of irritability and anger, which is a sign of depression in children. In addition, Dr. Veronica Olvera found it very significant that Student possessed and sold drugs at

school, because, as she read in Dr. Chiles' report, Student had been self-medicating with drugs, which is a red flag for depression. Also, she noted his drop in grades, and then opined that District should have assessed Student, as it was clear something was wrong, given his disciplinary record and academic decline. Moreover, Dr. Veronica Olvera explained that although plenty of children get expelled from school, they do not end up psychiatrically hospitalized. She opined that Student's hospitalization was due to a preexisting condition (i.e., hypothyroidism which caused his depression).

115. Her testimony was the first time she has testified as an expert witness.

DR. RIENZI HAYTASINGH

116. Dr. Rienzi Haytasingh, who is a licensed educational psychologist, provided expert testimony for District. Dr. Haytasingh received his bachelor's degree in psychology and child development from California State University at Chico in 1999, and his master's degree in school psychology from National University in 2001. He earned his doctorate in school and educational psychology from Alliant International University in 2005, and a post doctorate certificate in school neuropsychology from Texas Women's University in 2006. He received his board certification in 2006 from the American Board of School Neuropsychology.

117. Before receiving his bachelor's degree, Dr. Haytasingh worked as a psychiatric assistant at Tehama County Mental Health, and as a direct care counselor at a boys' home. Before he received his master's degree, Dr. Haytasingh worked as a resident assistant at a youth treatment center, a therapeutic behavioral specialist, and case manager at Vista Hill Foundation. He also had teaching experience as a substitute teacher for the Jamul-Delsura Union School District, and the Grossmont Union High School District.

118. After he received his master's degree, he served as a school psychologist for the San Diego Union High School District from 2001 to 2004, and for the Chula Vista

Elementary School District from 2004-2006, where the focus of his service centered on children with autism. From 2006 to the present, Dr. Haytasingh has been employed by Sweetwater Union High School District (Sweetwater), where he serves as a school psychologist and site administrator for the special education department at Eastlake high School. He also serves as Sweetwater's autism psychologist, as well as its school neuropsychologist. In his capacity as a school psychologist for Sweetwater, Dr. Haytasingh develops programs for students with special needs, provides individual and group counseling, implements IEPs, assesses students with suspected learning disabilities, and autism spectrum disorders, and implements appropriate strategies for students suspected with neurological/neuropsychological conditions that impact learning.

119. In addition to serving Sweetwater, Dr. Haytasingh has taught psychology students as an assistant professor at Chapman Univeristy for five years, and currently serves as an adjunct professor for Alliant International University in the graduate school of education, for National University in the school psychology graduate program, and for San Diego State University in the school of education, and in the school of psychology. He has also maintained a private practice since 2004, where he conducts school neuropsychological and psychoeducational assessments. He also conducts IEEs for San Diego City Schools, Coronado School District, Pauma-Valley Center School District, Escondido Elementary School District, Poway Unified School District, San Dieguito Union High School District, and Del Mar Elementary School District. Dr. Haytasingh has never been directly employed by District.

120. Dr. Haytasingh has attended over one hundred IEP meetings over the last year, and thousands over the course of his career. Since 2005, he has conducted 40-50 neuropsychological evaluations, and thousands of psychoeducational assessments.

121. Dr. Haytasingh was very familiar with the concept of child find, and explained that the Individual with Disabilities Education Act (IDEA) requires states to have a process in place to find and identify children with disabilities. Child find is triggered when a student evidences a problem with learning in school. In general, schools look for signs like developmental factors, factors in school, factors outside of school, performance achievement, attendance, social well-being, and other factors.

122. Dr. Haytasingh reviewed Student's education and medical records, and noted that in seventh and eighth grade, Student was in all regular education classes that were not modified. He also noted that Student engaged in some oppositional behavior in middle school by defying campus supervisors on several occasions by refusing to follow their directions. The records also showed that in ninth grade, Student took college preparation courses, and was showing evidence that he was learning in all subjects, including in Ms. Pillar's PE class, where he had a C+ average until the twelfth week mark of his first semester. Dr. Haytasingh noted that when Ms. Pillar caught Student cheating, which occurred in the middle of the first semester, Student's grade in her class began to drop thereafter, which Dr. Haytasingh attributed to Student's dislike of Ms. Pillar at that time. As a result, Student appeared unwilling to "dress out" for Ms. Pillar's class, which resulted in Student receiving an "F" in her class. However, Dr. Haytasingh also noted that Student received grades in the "A" range when Student received a new PE teacher at the beginning of the second semester.

123. Dr. Haytasingh concluded that Student should not have been referred for special education testing from April 2009 to June 2010, even though his grades had declined from those he received during his eighth grade year. Dr. Haytasingh explained that a decline in grades does not automatically trigger special education testing, because it is an expected trend in high school, particularly when a ninth grader takes college bound courses. He explained that a drop in grades can also result from a change

in rigor from middle school to high school. In addition, a decline can result from biological changes in students (i.e., puberty, and attractions to the opposite gender, which can result in distractions). Dr. Haytasingh further explained that failing PE, which appeared to be more related to Student's dislike of the teacher who confronted him for cheating on homework, did not mean Student was suffering from a disability. The records showed that, with the exception of Student's suspension and subsequent departure from school, Student's attendance was good, and he was making academic progress. Even considering Student's disciplinary infractions along with the decline in his grades, Dr. Haytasingh concluded that they were not enough to trigger a special education referral, because these issues were not unusual for teenagers to experience during the transition to high school.

124. Dr. Haytasingh also explained that Student's possession and sale of prescription medication was not enough to trigger the District's obligation to assess Student for special education, because the behavior of selling drugs does not equal a disability. In Student's case, Student sold drugs for the purpose of making money, according to Dr. Haytasingh's review of Dr. Chiles' report. Although Dr. Haytasingh considered the act unethical, it was a rational one if the objective was to make money, as opposed to an act driven by the existence of a disability. Also, Student's records indicated that he had been making academic progress at the time of the incident, and there was nothing in Student's school records that demonstrated that either the administration, Deputy Christensen, or any of the teachers at THS had knowledge that Student had abused drugs.

125. Dr. Haytasingh also noted that nothing in the records showed that any school official knew that Student had been placed in a mental health hospital. Even if they had, it would not have triggered child find, because mental health hospitalizations do not equal an IDEA disability. However, if the UCI discharge summary had been

provided to school officials, this would have triggered child find, as it included a diagnosis of depression. But the records did not indicate that the school had been provided with the discharge summary between April 2009 and June 2010. Although THS eventually learned that Student had been placed at SUWS, and later at Monarch, this knowledge, in and of itself, would not have triggered child find. Student's enrollment in such placements revealed nothing about Student's specific mental health issues, and whether they related in any way to a potential IDEA disability, particularly as they followed a disciplinary expulsion for drug sales.

126. Overall, Dr. Haytasingh concluded that District's "child find" obligation was not triggered because his behaviors that were known by school officials were not atypical of an average teenager, with the exception of the codeine selling incident, which could not be used as inference of a disability. He explained that the behaviors and grades, taken together or separately, were not suggestive of depressive or anxious behavior, or any other condition that would suggest to District that Student should be assessed.

STEVE GELSINGER

127. Steve Gelsinger, who is the lead school psychologist for District, provided testimony at hearing. Mr. Gelsinger received his bachelor's degree in biology and psychology from UCI, and his master's degree in educational psychology from California State University at Hayward. He has been a licensed marriage and family therapist since 1982, and had a private practice for 25 years, where he provided marriage and family therapy. He has also been a licensed educational psychologist since 1985. From 1979 to 1984, he was a school psychologist for the Fullerton School District where he served students from preschool to eighth grade. From 1984 to 1986, he was a school psychologist for the Centralia School District where he served students from preschool through sixth grade. Since 1986, Mr. Gelsinger has been a school psychologist for

District, and has been its lead school psychologist since 2010. As the lead psychologist, he consults and collaborates with 42 other school psychologists in District. Before he became lead psychologist, he provided assistance to staff for students who had learning and behavioral problems, including referring children for special education assessment, conducting assessments, report writing, and attending IEP meetings. In the course of his 32-year career as a school psychologist, he has attended thousands of IEP and student success team meetings, and has conducted thousands of psychoeducational assessments (approximately 70 to 100 per year). On average, he has made approximately four to ten initial eligibility recommendations per year for emotional disturbance, and five per year for OHI.

128. Mr. Gelsinger met Student in May 2011 for the purpose of conducting a psychoeducational assessment to determine whether Student qualified for special education.¹ In preparation for his assessment, he reviewed Student's past educational and medical records, as well as interviewed Student and Parents. He explained at hearing that he could form opinions about Student's functioning during the period of April 2009 through June 2010, based on the records and interviews. In order to make a current determination of how Student behaved back then, he asked Student and Parents questions about Student behavior in 2009, and then corroborated their responses with the records, such as Dr. Chiles' report, and UCI records. Mr. Gelsinger determined that

¹ Mr. Gelsinger prepared a psychoeducational report on or about June 13, 2011. However, the report falls outside of the relevant time period for the purposes of this due process matter, and, as such, will not be considered in this decision. As discussed in the legal conclusions section, such a report is not relevant to determining whether, given what District knew at the time, it should have suspected Student should be assessed for special education eligibility.

these responses were consistent, for the most part, with how the records indicated Student presented in 2009.

129. Based on his review of Student's records, as well as his interviews with Student and Parents, Mr. Gelsing determined that Student would not have been found eligible for special education between April 2009 and June 2010. In reviewing Student's transcript from middle school, it showed a pattern of ability to function and do well without special education and supports. In reviewing his ninth grade transcript, with the exception of his final report card, which showed a considerable decline in his grades due to his long-term absence after his suspension, Student's grades appeared typical to that of a ninth grade student. Even though Student and Parents elected to place Student in biology and Spanish to meet UC admission requirements, which were more difficult classes because they required an elevated amount of participation and classwork, Student still appeared to function and make progress, despite his fluctuating grades. Mr. Gelsing explained that high school, especially college preparation courses such as biology and Spanish, required a higher level of rigor than that found in middle school, therefore, it was no surprise that some grades in ninth grade were lower. But Mr. Gelsing considered the decline mild, because Student still had above a "C" average.

130. Mr. Gelsing did not see any evidence that Student met any of the eligibility requirements for ED between April 2009 and June 2010. After applying the statutory criteria, Mr. Gelsing explained that Student demonstrated an ability to learn given his grades, and an ability to maintain satisfactory interpersonal relationships with peers and teachers. Although Student did not like his PE teacher, Ms. Pillar, that did not demonstrate that he did not have an inability to relate to her, and he demonstrated pleasure in hanging out with his friends. Mr. Gelsing also did not find any inappropriate behaviors demonstrated over a long period of time and to a marked degree. Although Student advised Mr. Gelsing that he had been cutting himself, there

was no evidence that he cut himself at school or that the District had any knowledge of it, which suggested that the condition was not pervasive enough to transcend settings. Also, the fact that Student had been hospitalized did not suggest ED. Mr. Gelsinger explained that he has seen situations where a child has been hospitalized, where the child had been given a DSM diagnosis for depression, or oppositional defiant disorder, or poly substance abuse, but often times that student presented differently in a school setting, and was an overall high functioning student. In other words, the diagnoses did not make an educational impact. Similarly, in Student's case, although he was placed in a psychiatric unit where he received DSM diagnoses, his actions prior to his diagnoses did not demonstrate that Student had an emotional disturbance that impacted him educationally. In addition, Mr. Gelsinger noted that Student was hospitalized after a catastrophic event (i.e., caught selling drugs, facing expulsion, facing disappointment from Parents, and facing the loss of freedom from being grounded), and, as such, it would not have been unusual for Student to feel frustrated, angry, sad, or anxious at that time; but not because he necessarily had an emotional disturbance that met the ED criteria for special education eligibility. Although Student was diagnosed with depressive disorder, the records did not show that Student presented that way at school, particularly in a pervasive way. Finally, Mr. Gelsinger found no evidence in his school records suggesting that Student developed physical symptoms or fears associated with school. Even though Student advised Mr. Gelsinger that he had test anxiety, Mr. Gelsinger explained if Student had test anxiety that impacted his ability to do well on tests, his scores on Dr. Chiles' tests would have reflected that. However, Dr. Chiles' assessment showed that Student's scores were in the average to high range.

131. Mr. Gelsinger also did not see any evidence that Student met any of the eligibility requirements for OHI between April 2009 and June 2010. Specifically, Mr. Gelsinger concluded that although Student had hypothyroidism, the condition did not

adversely affect him at school, because nothing in the school records suggested that Student had limited strength, vitality, or alertness in his educational environment.

132. In addition, Mr. Gelsing also did not believe Student would have qualified for special education under the eligibility category of specific learning disability, because his educational performance between April 2009 and June 2010 did not demonstrate a severe discrepancy between achievement and intellectual ability. Specifically, his review of Dr. Chiles' testing showed that Student's cognitive and intellectual abilities were in the high average range, and his academic abilities were the equivalent of grade 11.2.

LEGAL CONCLUSIONS

1. Student contends that District violated its "child find" obligation by failing to assess Student for special education and related services from April 20, 2009 to June 10, 2010. Student argues that during this time period, District should have suspected him of having a disability that required special education because of the changes that occurred in his academic performance, as well as in his behavior. Specifically, Student's grade point average dropped from 3.17, which he earned during his final semester of eighth grade, to 2.4, which he earned during his first semester of ninth grade. Student also received an "F" in his PE class due to his failure to "dress out" and participate in the class. In addition, Student claims he did not participate in other classes, as he often placed his head down on the desk. Moreover, Parents had advised Student's biology teacher that Student had been taking Concerta to improve his focus and concentration. Student also engaged in an act of cheating, as well as an act of truancy, for which District imposed discipline (i.e., Saturday School). Student also threw two textbooks at a classmate, which resulted in the injury of the classmate. In addition, Student possessed and sold prescription medication to another classmate, which resulted in Student's suspension and eventual expulsion. He was also psychiatrically hospitalized three days

following his suspension, as he was a danger to himself and others, which ultimately led to his placement at SUWS, and then at Monarch. Moreover, Student's final report card showed that his grade point average had dropped to 1.2. Finally, Deputy Christensen had summoned Student to his office on a number of occasions, as he suspected Student of engaging in prohibited activity, including drug use. Student asserts that these factors should have at least prompted District to assess Student, as during the relevant period, he had been anxious, depressed, abusing drugs, suffered from test anxiety, and engaged in self-injurious behavior. Student further contends that if District had assessed Student between April 20, 2009 and June 10, 2010, Student would have qualified for special education under the eligibility categories of OHI and ED.

2. District disagrees, and contends that Student did not demonstrate signs of disability during the relevant time period that would have caused the District to believe Student should be assessed for special education. As such, child find was not triggered. District also asserts that even if a duty to assess had been triggered, Student would not have been eligible for special education under any eligibility category during the relevant time period.

APPLICABLE LAW

3. The Petitioner in a special education due process hearing has the burden to prove his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528].) As the petitioning party, Student has the burden of proof on all issues.

4. A request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (l).) Here, Student did not produce evidence at hearing to show that any exception to the statute of limitations

applied. Accordingly, Student's earliest claim begins April 20, 2009, two years prior to the filing of the complaint.

5. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability...." (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

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

special education." (*Fitzgerald v. Camdenton R-III School District* (8th Cir. 2006) 439 F.3d 773, 776.) A district's child find obligation toward a specific child is triggered when there is reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Rae* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

7. When an assessment is performed, the child must be assessed by a school district in all areas related to the suspected disability. No single procedure may be used as the sole criterion for determining whether the child has a disability or for determining an appropriate educational program for the child. (20 U.S.C. § 1414(a)(2), (3); 34 C.F.R. § 300.304(b)(2)(2006); Ed. Code, § 56320, subd. (f).) A district is also responsible for the planning of an instructional program to meet the assessed needs. (Ed. Code, § 56301.)

8. A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.) A pupil shall not be determined to be an individual with exceptional needs if the prevailing factor for the determination is one of the following: (A) lack of appropriate instruction in reading; (B) lack of appropriate instruction in mathematics; (C) limited English proficiency; or (D) if the pupil does not otherwise meet the eligibility criteria under federal and California law. (Ed. Code, § 56329, subd. (a)(2).) The law defines an individual with exceptional needs as one who, because of a disability requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subd. (b).)

9. A district's determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district is not held to a standard based on "hindsight." (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

10. California Code of Regulations, title 5, section 3030, subdivision (i), describes the criteria for determining whether a child qualifies for special education under the category of emotional disturbance:

Because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:

- (1) An inability to learn which cannot be explained by intellectual, sensory or health factors.
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (3) Inappropriate types of behaviors or feelings under normal circumstances exhibited in several situations.
- (4) A general pervasive mood of unhappiness or depression.
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

11. "Other health impairment" is defined, in relevant part, as "having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that...is due to chronic or acute health problems such as...attention deficit disorder or attention deficit hyperactivity disorder...and [a]dversely affects a child's educational performance."

(34 C.F.R. § 300.8(c)(9)(2006); see also Cal. Code Regs., tit. 5, § 3030, subd. (f) [defining OHI as “[a] pupil has limited strength, vitality or alertness, due to chronic or acute health problems...which adversely affects a pupil’s educational performance.”].)

12. A procedural violation only constitutes a denial of a FAPE if the violation impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

13. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) *Rowley* expressly states that as long as a child is offered a FAPE as defined above, questions of educational methodology are left to the discretion of the state and local educational agencies. (*Id.* at p. 208.)

ANALYSIS RE: CHILD FIND TRIGGER

14. Student failed to demonstrate by the preponderance of the evidence that District failed to meet its “child find” obligations between April 20, 2009 and June 10, 2010. Although Student had experienced a decline in grade point average during his ninth grade year, committed several behavioral and disciplinary infractions, and received psychiatric intervention, the evidence does not support a finding that the existence of

these factors should have caused District to suspect a disability that required special education. In other words, the facts and circumstances surrounding each factor listed by Student, as discussed in more detail below, when considered individually and collectively, did not reasonably place District on notice that Student could have been eligible for special education at the time.

15. When considering Student's drop in grades from the end of eighth grade when Student earned a grade point average of 3.17, to the end of his first semester of ninth grade when he earned a 2.4, the evidence shows, through the persuasive and credible testimony of Dr. Haytasingh, who has served as an educational psychologist for nearly 12 years, that ninth graders, in general, experience drops in grades. Indeed, as evidenced by the credible testimony of Mr. Gelsing, who had been an educational psychologist for 32 years, high school classes, particularly college preparation courses, require a higher level of rigor than that found in middle school courses. In addition, other external factors, as explained by Dr. Haytasingh, such as a larger student body on a high school campus, as well as biological factors (i.e., puberty, an attractions to the opposite sex), could result in social distractions that could impact grades. In fact, Dr. Haytasingh's and Mr. Gelsing's explanations are supported by Student's testimony. Specifically, Student testified that his transition from eighth grade to ninth grade was difficult, because the school was bigger, the student body was larger, there was a lot of social pressure, and the subjects were harder. Even Student's expert, Dr. Pedro Olvera, who has served as an educational psychologist for eight years, conceded that the rigor of the coursework, transitioning to a new and larger school site, and other external factors could impact a pupil's performance in each individual class. Given the above, it was not unreasonable for District to assume that Student's decline in grades from middle school to high school concerned factors unrelated to a disability. In addition, with respect to Student's final report card for ninth grade, which indicated a grade point

average of 1.2, the evidence shows that Student's decline in grades for that period resulted from Student's absence from THS as a result of his expulsion, an act unrelated to a suspected disability. Further, at hearing, it was demonstrated that Student could have, but did not, complete the work for the semester because Parents chose to enroll Student in a wilderness camp rather than complete the class work to correct his grades.

16. Similarly, Student's "F" in Ms. Pillar's PE class would not have prompted District to suspect a disability. Although Student received the "F" prior to the relevant time period of April 2009 to June 2010, the evidence shows that Student's grade in PE had fluctuated greatly. Specifically, Student received a "C+" six weeks into the school year, an "F" at the twelve week mark, and then another "F" at the end of the first semester. However, just six weeks into the spring semester, when Student had a new PE teacher, Student received a grade of "A-", and then an "A" at the twelve week mark. Dr. Haytasingh offered a reasonable explanation for Student's fluctuating grades. Specifically, Dr. Haytasingh noted that when Ms. Pillar caught Student cheating on homework, which occurred in the middle of the first semester, Student's grade in her class began to drop thereafter, which Dr. Haytasingh attributed to Student's dislike of Ms. Pillar at that time. In fact, at hearing, Father testified that Student considered Ms. Pillar a "bitch." As a result, according to Dr. Haytasingh, Student appeared unwilling to "dress out" for Ms. Pillar's class, which resulted in Student receiving an "F" in her class. This theory is supported by the fact that Student received grades in the "A" range in PE when Student received a new PE teacher.

17. In regard to Student's prescription for Concerta, Student contends that when Parents advised Student's biology teacher, Mr. Cogan, in March 2009 that Student had been taking the medicine to help him concentrate and focus better in school, District had notice that Student potentially had a disability that required special education. Although the Concerta issue is outside of the relevant time period of April

2009 to June 2010, the credible testimony of Mr. Cogan establishes that he would not have referred a student for special education solely due to medication being prescribed to a student. Instead, he would reasonably look to multiple factors in the school environment, such as inattention, impulsivity, and disruptions. In that regard, Student presented no credible evidence showing that he had engaged in such behaviors in Mr. Cogan's class, or in any other class at that time. In fact, shortly after Parents had advised Mr. Cogan of Student's prescription, Student had received an "S" (i.e., satisfactory) in citizenship in all of his classes, suggesting that Student had not engaged in acts of impulsivity, inattention, or disruptions, or was otherwise a behavioral problem. In addition, Student's grade in biology at that time had improved from a "D+" to a "C+", and he had passed all of his other classes. Given this, it was reasonable for Mr. Cogan not to suspect that Student had a disability that warranted special education intervention.

18. When considering Student's disciplinary infractions during his ninth grade year, they did not demonstrate that Student could have been suffering from a disability that required special education. Specifically, Student's one instance of cheating in October 2008, as well as his one instance of truancy in January 2009, even though outside of the relevant time period of April 2009 to June 2010, would not have prompted District to refer Student for special education testing. The evidence shows that Student's act of cheating was his first of three disciplinable infractions of his ninth grade year, for which District reasonably imposed discipline (i.e., four hours of Saturday School). Given that it was Student's first infraction, which occurred one month into the school year, District had no reason to suspect, with nothing more, that his act of cheating was due to a possible disability. Similarly, Student's failure to attend one class, which resulted in Student's truancy and another imposition of Saturday School, did not evidence a possible disability, especially given Student's attendance rate, which Dr.

Haytasingh confirmed was good. Also, at that time, THS had a truancy rate of nearly ten percent, which suggested that student truancy was common among general education students and not necessarily an indication of a need for special education. Notably, after District disciplined Student for his act of cheating, and for his act of truancy, District never caught Student engaged in similar acts again, suggesting that District's intervention had been successful.

19. In regard to the textbook throwing incident, Student contends that his act involved aggression, for which District should have considered, and ultimately assessed Student for special education eligibility. Student bases this assertion on the testimony of Dr. Pedro Olvera, who explained that he considered the textbook throwing incident a very significant event, because it involved a purposeful act to hurt another child with violence. Similarly, Dr. Veronica Olvera also suggested that the textbook incident represented that Student had lost control and went into a state of irritability and anger. However, Dr. Pedro Olvera admitted at hearing that he had not asked Student specific questions about the incident, namely why he threw the book, or what events precipitated the act. Yet, he reached a conclusion that the textbook incident was significant because it involved a purposeful act of aggression and violence. Also, as Student advised at hearing, he could not recall the details of the textbook throwing incident, therefore, it logically follows that he had not told Dr. Veronica Olvera why he had thrown the book either. Such unsubstantiated conclusions made by Dr. Pedro Olvera and Dr. Veronica Olvera render them less than credible. Notwithstanding this, the evidence shows that one person actually investigated the incident and learned the details of the event at the time it happened. Specifically, according to the credible and uncontroverted testimony of Mr. Rim, he interviewed Student and other pupils in the class, and discovered that the students had been involved in horseplay during class, and that Student had not thrown the book with the intention of hurting anybody.

Consequently, Mr. Rim elected not to impose any discipline. In short, Mr. Rim's explanation at hearing, based on his investigation in school at the time, was far more credible than the opinions of Student's hired expert witnesses. Given these factors, District had no reason to suspect Student should be assessed for special education based on this event.

20. When considering Student's suspension and eventual expulsion for his possession and sale of prescription drugs to another classmate, Student contends that such an act should have placed District on notice that he had a potential disability. However, according to the persuasive testimony of Dr. Haytasingh, selling drugs does not equal a disability, and therefore does not trigger child find. This position is supported by Mr. Rim's credible testimony, based on 35 years experience as an educator and administrator, that a discipline issue associated with selling drugs would not trigger "child find." In that regard, the evidence shows that at that time of the incident, Student had been making academic progress, passing all of his classes, and attending school regularly. As such, it was reasonable for District to conclude that the drug incident was unrelated to the existence of a potential disability impacting his ability to access his education. Although Student further contends that Deputy Christensen had previously suspected Student of drug use, and, as such, District should have suspected a potential disability and assessed Student, the fact remains that Deputy Christensen, who was never an employee of District, never found evidence to corroborate his belief. In addition, there was nothing in Student's school records indicating that the administration, or any of the teachers at THS, had knowledge of any potential drug use on Student's part.

21. Finally, Student contends that because District knew that Student had been psychiatrically hospitalized, subsequently placed at SUWS, and then at a therapeutic residential school, District should have suspected a disability and arranged

to assess Student. However, according to the credible testimony of Dr. Haytasingh, a mental health hospitalization, in and of itself, would not have triggered child find, as the hospitalization does not equal an IDEA disability. Notwithstanding this, Dr. Haytasingh acknowledged that had the UCI discharge summary, which included a diagnosis of major depressive disorder, hypothyroidism, polysubstance abuse, and difficulty in social, emotional, and occupational functioning, been provided to school officials, it would have triggered child find, requiring District to assess Student for special education eligibility. However, Student presented no evidence showing that Parents provided the discharge summary to District between April 2009 and June 2010. In fact, there is no evidence that Parents ever shared with District, during the relevant period, any pertinent information concerning Student's mental health status. Specifically, Student presented no credible evidence demonstrating that Parents advised school officials about Student receiving therapy from Dr. Powers during the first semester of his ninth grade year, or from a subsequent therapist at the beginning of his second semester. In addition, there is no evidence that Parents provided District with Dr. Chiles' report during the relevant period, which set forth diagnoses of depressive disorder, anxiety disorder, and oppositional defiant disorder. Moreover, there is no evidence that Parents provided District with records from SUWS, Monarch, or the Center that outlined Student's mental health issues during the relevant time period. Finally, there is no evidence that Parents ever requested District to assess Student for special education eligibility after learning about his mental health diagnoses. Given the above, Student's hospitalization and subsequent placements did not trigger child find.

22. When considering all of the above factors together, Student contends that their collective existence placed District on notice that Student should be assessed for special education eligibility. Specifically, Student contends, based on the testimony of Dr. Pedro Olvera and Dr. Veronica Olvera, who concluded that when looking collectively

at all of the discipline incidents, the hospitalization and subsequent placements, as well as the decline in Student's grade point average, District should have assessed Student because Student appeared to have emotional issues. However, Dr. Haytasingh credibly testified that Student should not have been referred for special education testing, as his behaviors were not uncharacteristic of a typical teenager, with the exception of the prescription medication selling incident, and thus, did not rise to the level of triggering child find. In addition, despite Dr. Pedro Olvera's and Dr. Veronica Olvera's assertion that Student had emotional issues, evidence of these emotional issues, according to Dr. Haytasingh, did not appear in any school records, and did not interfere with Student's ability to make academic progress during the April 2009 to June 2010 period. As such, it was reasonable for District to conclude that Student had no disability, and, therefore, had no duty to assess him.

ANALYSIS RE: ELIGIBILITY

23. Even if the above factors had triggered District to conduct an assessment, the evidence shows that Student would not have qualified for special education under the eligibilities categories of OHI or ED, despite Student's contention to the contrary. Specifically, in regard to OHI, Student contends that his hypothyroidism had adversely affected him at school, because the condition, which caused Student to be depressed and unmotivated to do his work and participate in school, and, according to Student's testimony, to "g[i]ve up on" himself, had limited his strength, vitality, or alertness in his educational environment. In support of this position, Student relies on the testimony of Dr. Fernandez, Dr. Veronica Olvera, and Dr. Pedro Olvera, who explained that hypothyroidism can produce depressive symptoms in children, which could impact behavior, cognitive functioning, and personality. However, the evidence shows that Student's hypothyroidism had not adversely impacted his educational performance. Specifically, despite his assertion that he was unmotivated to do his work and participate

in school, and claims to have often placed his head down on the desk in class, the evidence shows that Student's attendance was good up until the time of his suspension, and Student had shown considerable effort in his classes, despite the rigor of his coursework. For example, Student, who had received an "F" in PE after the fall semester, received an "A-" and then an "A" in PE for the six and twelve week progress reports of the spring semester, respectively. Also, Student's grade in biology had improved from a "D+" to a "C+" in the twelve week progress report card of the spring semester. In addition, Student's English grade had improved from a "C+" to an "A-" in the six week progress report of the spring semester. Also, Student's Algebra grade had improved from a "C" to a "C+" in the twelve week progress report of the spring semester. Even Dr. Pedro Olvera conceded that because Student had improved in some classes, and passed other classes with a C- or better, meant that Student had put forth effort in his classes, despite Student's alleged lack of motivation. In addition, Student had received an "S" (i.e., satisfactory) in citizenship from all of his teachers at the time of his suspension, suggesting that his hypothyroidism had not negatively impacted his behavior in the classroom such that it interfered with his ability to access his education. Indeed, Student stated during his testing with Dr. Chiles that, "in school, I act cool and chill and sweet and try to follow the rules." In addition, according to the results of the WJ-III administered by Dr. Chiles', Student's academic skills score was the grade equivalent of 11.2, which establishes that Student had received educational benefit in the District.

24. Similarly, in regard to ED, despite Student's contention that during the relevant period, he had been abusing drugs, suffering from test anxiety, engaging in self-injurious behavior such as cutting and hitting himself, as well as other acts of anxiety or depression, the evidence shows that Student had not exhibited such behavior at school. According to the credible testimony of Mr. Gelsinger, who applied the statutory criteria for ED, Student had not demonstrated an inability to learn given his

passing grades. Indeed, as Dr. Chiles conceded at hearing, it is not automatic that a student with depression or anxiety would not make academic progress. Mr. Gelsinger also found that Student was able to maintain satisfactory interpersonal relationships with peers and teachers, which was supported by Student's admission to Mr. Gelsinger that he enjoyed hanging out with his friends. Mr. Gelsinger also did not find any inappropriate behaviors demonstrated over a long period of time and to a marked degree. Although Student claims he had been using drugs for years, there is no proof that any teacher or administrator, or even Deputy Christensen, found evidence of Student abusing drugs at school during the relevant period. In addition, although Student advised Mr. Gelsinger that he had been cutting himself for years, Mr. Gelsinger advised at hearing that there was no evidence that he cut himself at school, which suggested that the condition was not pervasive enough to transcend settings. Similarly, although Student was diagnosed with anxiety and a depressive disorder, the records did not show that Student presented that way at school, particularly in a pervasive way. Even Dr. Chiles admitted that he had no knowledge of Student manifesting depression at school, despite his finding that Student had experienced dejected and gloomy moods for several years. Finally, Mr. Gelsinger found no evidence in his school records suggesting that Student developed physical symptoms or fears associated with school. Even though Student advised Mr. Gelsinger that he suffered from test anxiety, Dr. Gelsinger credibly explained that if Student had test anxiety that impacted his ability to do well on tests, his scores on Dr. Chiles' tests would have reflected that. However, Dr. Chiles' assessment showed that Student's scores were in the average to high range. Given the above, even assuming for the sake of argument District should have assessed Student, Student did not prove at hearing that such an assessment would have resulted in finding him eligible for special education under the categories of OHI or ED. In sum, Student failed to demonstrate by a preponderance of the evidence that District denied

him a FAPE by failing to comply with its "child find" obligations. (Factual Findings 1 - 132; Legal Conclusions 1 - 24.)

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed Code, § 56505, subd. (k).)

DATED: November 23, 2011

_____/s/_____

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings