

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2013100097

v.

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT, HUNTINGTON BEACH
CITY SCHOOL DISTRICT.

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT,

OAH CASE NO. 2014010095

v.

PARENT ON BEHALF OF STUDENT.

DECISION

Student's parent on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on September 30, 2013, naming the Huntington Beach Union High School District (High School District), the Huntington Beach City School District (Elementary District), and the West Orange County Consortium for Special Education. The matter was continued for good cause on October 25, 2013. On December 24, 2013, the West Orange County Consortium for Special Education was dismissed from the action by OAH order. On January 2, 2014, the High School District filed a due process hearing request against Student. OAH consolidated the two cases on January 24, 2014.

Administrative Law Judge Susan Ruff heard this matter in Huntington Beach, California, on February 11, 12, 13, 18, 19 and 20, 2014, and March 11 and 12, 2014.

James Peters, III, appeared on behalf of Student.¹ Student's mother attended portions of the hearing and testified at the hearing. Student did not attend.

Karen Van Dijk, Attorney at Law, represented the High School District. Douglas Siembieda, Director of Special Education, and Dr. Crystal Bejarano, Director, West Orange County Consortium for Special Education, attended the hearing on behalf of the High School District.

Ernest Bell, Attorney at Law, represented the Elementary District. Cathy Cornwall, Director of Student Services, attended the hearing on behalf of the Elementary District.

A continuance was granted for the parties to file written closing arguments and the record remained open until March 26, 2014. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES²

STUDENT'S ISSUES INVOLVING THE ELEMENTARY DISTRICT:

1. From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary District deny Student a free appropriate public education

¹ Mr. Peters identified himself as a paralegal from the law office of Peter Collisson. Mr. Collisson did not appear at the hearing. Mr. Peters was assisted by two other individuals during the hearing, neither of whom was identified as an attorney.

² Some of the issues have been combined for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

(FAPE) by failing to assess Student appropriately in the areas of psychology, behavior, and counseling?

2. From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary District deny Student a FAPE by failing to identify Student's eligibility appropriately?

3. From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary District deny Student a FAPE by failing to place Student in a locked housing facility at a residential treatment center (RTC)?

4. From September 30, 2011, through the end of the 2011 – 2012 school year, did the Elementary District deny Student a FAPE by failing to offer: 1) appropriate behavior services to Student; 2) appropriate parent training; 3) an appropriate functional behavior assessment (FBA); 4) appropriate psychology/counseling sessions; and 5) appropriate behavior health counseling and psychologist services to Student's parent?

5. Did the Elementary District deny Student a FAPE by failing to permit Student's custodial parent appropriate participation in the individualized education program meeting held on March 26, 2012?

STUDENT'S ISSUES INVOLVING THE HIGH SCHOOL DISTRICT

6. Did the High School District deny Student a FAPE from June 2012 through September 30, 2013, by failing to conduct IEP meetings in a timely and appropriate manner?

7. From June 2012, through the end of the extended school year (ESY) period at the end of the 2013 – 2014 school year, did the High School District deny Student a FAPE by failing to assess Student appropriately in the areas of psychology, behavior and counseling?

8. From June 2012, through the end of the ESY period at the end of the 2013 – 2014 school year, did the High School District deny Student a FAPE by failing to place Student in a locked housing facility at an RTC?

9. From June 2012, through the end of the ESY period at the end of the 2013 – 2014 school year, did the High School District deny Student a FAPE by failing to offer: 1) appropriate behavior services to Student; 2) appropriate parent training; 3) an appropriate FBA; 4) appropriate psychology/counseling sessions; and 5) appropriate behavior health counseling and psychologist services to Student's parent?

10. From June 2012, through the end of the ESY period at the end of the 2013 – 2014 school year, did the High School District deny Student a FAPE by failing to consider Dr. Ross' and Dr. Paltin's recommendations that Student be placed in a locked RTC?

11. Did the High School District deny Student a FAPE at the February 20, 2013 IEP meeting by developing an IEP without parental participation and then offering it to Student's parent for ratification with a "take it or leave it" position?

HIGH SCHOOL DISTRICT'S ISSUE:

12. Did the High School District's placement and related services offered in the IEP amendment dated September 23, 2013, offer a FAPE to Student in the least restrictive environment?

SUMMARY OF DECISION

This consolidated case involves a teenager who had an ongoing problem with truancy. In Student's portion of the case, Student contends that Student should have been placed in an out-of-state RTC with a locked housing facility at all times at issue in this case, going back to September 30, 2011, when the statute of limitations period began. Student also alleges a series of related issues involving assessments, procedural

violations, and failure to offer appropriate IEP services. The two school districts involved in this case – the Elementary District and the High School District – contend that their actions and IEP offers were appropriate at all times. They maintain that Student did not need a locked, out-of-state RTC placement until one was offered in September 2013.

In the High School District's portion of the case, the High School District contends that the proposed September 23, 2013 IEP offered Student a FAPE in the least restrictive environment when it offered Student a placement in a fully-locked RTC in Utah. Student contends that the High School District should have offered placement in a different RTC in Utah with only a locked housing facility.

This Decision finds that, at all times at issue in this case, the two school districts made appropriate offers of FAPE based on the information possessed by each district at the time the various IEP offers were made. The two districts also properly followed special education law and procedures. The High School District's proposed September 23, 2013 IEP offered Student a FAPE in the least restrictive environment. Student's claims for relief are denied.

FACTUAL FINDINGS

1. Student is a 16-year-old youth who is eligible for special education under the category of emotional disturbance. Student has had many psychological diagnoses over the years, including but not limited to, oppositional defiant disorder, attention deficit hyperactivity disorder, anxiety disorder, and mood disorder not otherwise specified.

2. In terms of his education, Student's greatest difficulty has been his refusal to attend school. The experts disagree regarding the extent to which Student's truancy resulted from learned behaviors which were reinforced by his family situation (including an ongoing dispute between his parents) and the extent to which his truancy resulted from an underlying emotional disorder such as anxiety. During those times in which

Student attended school, he was able to learn and generally demonstrated at least average cognitive potential.

3. Student's mother had had difficulty with Student in her home for many years prior to the times at issue in this case. She believed that Student needed to be placed in an RTC since he was approximately 10 years old.

THE 2011 – 2012 SCHOOL YEAR (STUDENT'S EIGHTH GRADE YEAR)

4. The events at issue in this case began in September 2011, when Student was in the eighth grade attending school within the jurisdiction of the Elementary District.³ Student had previously been assessed to see if he was eligible for special education in approximately May and June 2011, and an IEP meeting had been held in June 2011. At that time, the Elementary District did not find Student eligible for special education.

5. In July 2011, prior to the start of Student's eighth grade year, Student was hospitalized at the University of California Irvine (UCI) psychiatric unit. According to Student's mother, this hospitalization resulted from a physical altercation when Student's father showed up at Student's mother's home unexpectedly, during which Student threatened his father with a knife.

6. Student began school in the fall of 2011 in an eighth grade general education classroom. Student had not been found eligible for special education at that time. Student had an ongoing problem with truancy throughout the first quarter of his eighth grade year.

³ Any of Student's claims which arose prior to September 30, 2011, were dismissed by OAH order dated December 24, 2013, because they were outside the two-year statute of limitations period. Factual Findings herein regarding events prior to September 30, 2011, are made solely for background purposes to explain later events.

7. The Elementary District was informed about the hospitalization and requested copies of Student's UCI records. On September 28, 2011, Student's mother sent a letter to Cathy Cornwall, the Director of Student Services for the Elementary District, forwarding the hospital records from the UCI. Her letter stated that she hoped they could "move forward with an IEP." She did not request an assessment in the letter.

8. Student received ongoing mental health and other services through the county both before and after the July 2011 UCI hospitalization. On October 7, 2011, Student's treating therapist David Paltin, Ph.D. drafted a report at the request of Student's mother in which he recommended, among other things, that Student's IEP team should reconvene to review the new information regarding Student's "emotional health status with regard to eligibility for special education services." Dr. Paltin also recommended that the Elementary District conduct a behavioral assessment of Student. Dr. Paltin's qualifications and his report are discussed in further detail in Factual Findings 15 – 21 below.

9. During a conversation with Lisa Endelman, an Elementary District school psychologist, Student's mother made a verbal request for a new assessment. On October 7, 2011, Ms. Endelman sent a letter to Student's mother informing her of a parent's right to request an assessment and explaining to whom the written request for assessment should be made.

10. On October 24, 2011, Student's mother sent a letter requesting a full special education assessment of Student as well as a functional analysis assessment.

11. The Elementary District staff questioned whether a new assessment was necessary so soon after the prior assessment in May 2011. During the hearing, Ms. Cornwall explained that the new information provided in Dr. Paltin's report and the UCI records involved the same type of home behaviors the Elementary District assessors had already considered in the assessment in May 2011. However, in an abundance of

caution, the staff decided to “err on the side of the child” and conduct a new psychoeducational assessment.

12. The Elementary District also agreed to conduct a functional behavior assessment (FBA) of Student. They did not agree to the functional analysis assessment requested by Student’s mother because that type of assessment is used: 1) when a child with an IEP exhibits serious behaviors that are preventing the child from reaching IEP goals despite IEP behavioral and instructional interventions; or 2) when a child exhibits serious behaviors that put the child or others at risk. Student’s behaviors did not rise to those levels.

13. On November 1, 2011, Ms. Cornwall sent a letter to Student’s mother granting the request for a new psychoeducational assessment of Student and agreeing to conduct an FBA. The Elementary District stated that an IEP meeting would be held to review the assessment after the assessment was completed. The Elementary District was not required to hold an IEP meeting before the assessment, because Student was not a special education pupil at the time.

14. The Elementary District received Student’s mother’s consent to the assessment plan around November 14, 2011, and the Elementary District conducted the assessment and the FBA in December 2011 and January 2012, as will be discussed below.

DR. PALTIN’S OCTOBER 7, 2011 REPORT

15. Dr. Paltin was one of Student’s primary expert witnesses during the hearing. He provided therapy services to Student beginning in approximately July 2011, around the time of Student’s UCI hospitalization. Dr. Paltin was an employee of Providence Community Services, an agency which contracted with the county to provide mental health services. He received his bachelor’s degree in psychology in 1984, his master’s degree in clinical psychology in 1988, and his doctorate in clinical psychology

from United States International University in 1990. He has been working as a psychologist since 1992, has taught university classes, has published journal articles and a book related to psychotherapy issues, and has presented numerous lectures/presentations relating to psychology.

16. Dr. Paltin provided psychotherapy to Student and informally made an ongoing assessment of Student's progress, but did not conduct a psychoeducational assessment of Student. Student's mother filled out a child behavior checklist at the time Dr. Paltin began his treatment of Student, but Dr. Paltin did not conduct any formalized testing of Student, nor did he administer any other formal rating scales or other standardized assessment measures to Student or Student's parents. Dr. Paltin never observed Student in a school setting.

17. During the fall of 2011, Dr. Paltin was concerned about Student's functioning. He felt that Student had not improved since Student left the UCI hospital and that Student's behavioral health was interfering with his ability to participate in school. Even when the county provided additional services to Student, such as a behavioral coach, Student was not responding to the interventions and was not going to school.

18. At the request of Student's mother, Dr. Paltin wrote the October 7, 2011 report described in Factual Finding 8, above. Dr. Paltin's report recommended that Student's IEP team should reconvene to review and address further information that might not have been available to the team in the past with respect to Student's emotional health status. His report stated that Student evidenced conduct within the description of a pupil with an emotional disturbance. The report also recommended, among other things, that Student be provided with a positive behavioral support plan to address "maladaptive communication and reactions to expectations in his program." Dr. Paltin believed that a "Functional Behavioral Analysis" would assist in identifying triggers

and consequences that might lead to increased positive target behaviors. His report also opined that the IEP team should consider providing services to Student in his home setting.

19. Dr. Paltin's report did not make a recommendation that the Elementary District should find Student eligible for special education, nor did it recommend that Student be placed in an RTC. Dr. Paltin did not believe it was within his purview or scope to make a recommendation as to an educational setting for Student under these circumstances. As a behavioral health provider, he felt that his duty was to treat Student's condition, not to recommend an educational placement. During the hearing, he stressed that he had not done a psychoeducational assessment of Student, and did not tell the Elementary District to find Student eligible for special education. Instead, his report asked Student's team to review the information provided.

20. Dr. Paltin had a conversation with Student's mother in approximately late January or February 2012, about the possibility that Student should be placed in an RTC. He felt that Student was not benefiting from outpatient support, and was concerned about Student's tendency to go on the attack based on perceived threats that did not exist. Dr. Paltin was concerned about the safety of Student's family and Student's younger brother. At the time of the conversation, Dr. Paltin felt that Student's mother seemed ambivalent about an RTC, and Dr. Paltin did not know if she fully understood what he was suggesting.

21. Dr. Paltin ceased providing services to Student in approximately March or April 2012, when Student was living in his father's home.

THE ELEMENTARY DISTRICT'S MULTIDISCIPLINARY PSYCHOEDUCATIONAL ASSESSMENT

22. In December 2011 and January 2012, the Elementary District conducted the multidisciplinary psychoeducational assessment of Student requested by Student's

mother and prepared a report dated January 25, 2012. The purpose of the assessment was to determine if Student was eligible for special education and related services.

23. The individuals who conducted the assessment included school psychologist Natasha Adamo, Psy.D., school nurse Ginger Skinner, special education teacher Scott Christian, and regular education teacher Kim Fotiades. The assessment included Student and teacher interviews, input from Student's mother, review of records and previous assessment reports (including Dr. Paltin's October 2011 report), testing (including, but not limited to, cognitive and academic testing), and observations.

24. Many of the assessment instruments focused on Student's behavior, mental health, and/or social/emotional functioning. These assessment instruments included the Conner's Rating Scale – Third Edition, the Behavior Assessment System for Children –Second Edition, the Reynolds Adolescent Depression Survey – Second Edition, the Emotional Disturbance Decision Tree, and the Devereux Behavior Rating Scale.

25. The assessment results showed that Student was in the average range cognitively. In general, he was also average in his academic testing, though he did score below average in a few subtests. For example, his writing fluency subtest was far below average. His math reasoning subtest score was below average, but because he had scored in the average range in that area during the May 2011 assessment, the assessor attributed the low score to Student's failure to attend school rather than a learning disability. The behavioral, mental health and social-emotional testing showed that Student had significant issues in many areas related to mental health. The assessment concluded that Student met the criteria for eligibility under emotional disturbance.

26. The tests and assessment materials selected by the Elementary District met the statutory requirements. They were validated for the specific purposes for which they were used and were administered in conformance with the test manufacturer's instructions. They were selected and administered so as not to be racially, culturally, or

sexually discriminatory. They were administered in Student's native language of English. They included materials tailored to assess specific areas of educational need. No single procedure was used to analyze Student's eligibility for special education, or to determine appropriate educational programming. Cognitive testing was performed by a licensed school psychologist, and health testing was conducted by the school nurse. The individuals who conducted the testing were familiar with those assessment measures and were qualified to administer those particular assessment measures.

27. Robyn Moses, Director, Mental Health Services, for the High School District, testified as an expert on behalf of both school districts. She is a licensed educational psychologist and licensed professional clinical counselor. She received her bachelor's degree in child development, with a minor in psychology in 1987, and her master's degree in educational psychology and counseling in 1990. She has worked as a preschool teacher, a school psychologist, a principal, and a special education coordinator. In 1997, she was an adjunct professor for National University, and she has made numerous educationally-related presentations over the years. She has had significant training regarding pupil behaviors, has been trained as a behavior intervention case manager, and received training by experts in data collection, intervention strategies and assessing data. At the time of the Elementary District's assessment, she was the Program Director for the West Orange County Consortium of Special Education. She was familiar with Student and attended IEP meetings for Student, including the March 2012 IEP team meeting.

28. In his written closing argument, Student attempted to impeach Ms. Moses' credibility. First Student argued that Ms. Moses "falsified [Student's] background information" to a possible RTC placement by claiming Student had no history of physical aggression at school. However, the evidence showed that her statement was correct – Student did not have a history of physical aggression at school. As will be addressed

below, his few incidents of aggression in middle school were typical of middle school boys. Student also claims that Ms. Moses falsely denied she made a statement during the January 9, 2013 IEP about Student needing a locked RTC placement. However, Student did not directly question her about that statement during the hearing and she never denied it; Student questioned a different witness about the statement. Finally, Student contends that Ms. Moses “concocted a story” about Student texting a suicide message to another pupil while he was at Island View residential treatment center (Island View). Student contends that could not have happened based on the testimony of two Island View witnesses. However, Ms. Moses merely testified to what had been told to her by school staff about Student’s text message.⁴ She did not invent a story. Contrary to Student’s claims, Ms. Moses was a credible witness with an excellent memory for details regarding the events at issue – her demeanor was direct and calm, and her testimony was consistent with the documentary evidence in the case.

29. During the hearing, Ms. Moses opined that the Elementary District assessors properly chose a selection of tests and assessment tools that allowed input from multiple teachers, Student, and Student’s mother. In her opinion, the assessment was appropriate.

30. The testimony of the Elementary District assessors supported Ms. Moses’ opinion that the pschoeducational assessment met the requirements of the code and was sufficient to address Student’s areas of suspected disability.

⁴ Apparently a pupil told a counselor that Student had sent a text with a suicide message. The counselor told Ms. Moses. Because of the triple hearsay nature of the event, it is not discussed in the Factual Findings related to Island View below and none of the conclusions in this Decision are based on that event.

31. Student brought in no persuasive evidence to refute the testimony of Ms. Moses or the Elementary District assessors. Dr. Paltin did not criticize the assessment or the report. As will be discussed below, Student's other expert Dian Tackett was not a psychologist. Her testimony focused mostly on problems with the FBA. She admitted that she was not trained to conduct a social/emotional assessment of a child.

THE ELEMENTARY DISTRICT'S FUNCTIONAL BEHAVIOR ASSESSMENT

32. Around the same time that it completed the psychoeducational assessment, the Elementary District also conducted an FBA. Dr. Adamo and Mr. Christian completed the FBA. Their report was issued on January 25, 2012. The two targeted behaviors in the FBA were Student's failure to attend school and his anxiety.

33. The FBA looked at the antecedents for the behaviors, the past consequences for the behaviors, the triggering events and setting events leading to the behaviors, and attempted interventions. The FBA concluded that when Student was required to attend school or asked to complete a non-preferred activity in his home, he displayed the problem behaviors (excessive absences from school and anxiety) in order to escape from the non-preferred activities.

34. The FBA did not target aggression as a behavior. Although Student had incidents of aggression in the past that led to school suspensions, the Elementary District staff did not believe those incidents demonstrated a need for an FBA targeting aggression. Student's aggressive incidents at school were not unusual for a middle school boy. They were not serious enough to necessitate an FBA.

35. During the hearing, Student's expert Dr. Tackett was highly critical of the Elementary District's FBA. Dr. Tackett is a behavior specialist who had completed her doctoral work at the time of the due process hearing and was waiting to receive her

diploma.⁵ She is not a psychologist. She owns and operates a non-public agency that provides behavioral services to autistic children and other special needs children. She holds special education teaching credentials and has conducted many FBA's over the years.

36. Dr. Tackett prepared a report dated February 4, 2014, approximately a week before the hearing began. She did not meet with Student or formally assess him. Her first and only contact with Student was a 45-minute telephone conversation with him in February 2014. She did not know Student at the time he attended school within the Elementary District.

37. Dr. Tackett took issue with almost every aspect of the Elementary District's FBA. She did not believe that truancy was a behavior that could be targeted in an FBA. Instead, she believed the behaviors that were causing the truancy should have been targeted. In her opinion, Student was avoiding school because of the stressors and problems with peers and because he felt uncomfortable at school. She felt the lack of support being supplied by the school district perpetuated Student's problems. In her opinion, Student should have been placed in a locked, out-of-state residential facility.

38. She also disagreed with the way the FBA described Student's problem behaviors. She felt the FBA did not describe how often the behaviors occurred or what they looked like. In her opinion, the FBA did not appropriately describe the consequences of the behaviors. She objected to the list of antecedent behaviors and

⁵ During the hearing, a question arose as to whether she should properly be called a doctor. Her curriculum vitae, which was entered into evidence, indicated that she had received her doctorate in 2014, and she stated it was appropriate to call her a doctor because she had completed the doctoral work and was just awaiting her diploma. Therefore, this Decision will address her as Dr. Tackett.

setting events because she felt it was nothing more than a cut-and-paste of his diagnoses. In her opinion, the items the FBA listed under triggering events should have been under antecedent events.

39. There are many factors that make Dr. Tackett's opinion unpersuasive. First, Dr. Tackett's written report contained inaccurate information. For example, Dr. Tackett stated that "Dr. Paltin's report dated 10/7/11, identified that the best thing for [Student's] academics, social and emotional well being would best be served in a locked RTC." As stated above in Factual Findings 15 – 21, Dr. Paltin's report identified no such thing. Even a casual reading of Dr. Paltin's report would not lead the reader to conclude that Dr. Paltin recommended an RTC placement for Student. During cross-examination, Dr. Tackett admitted that Dr. Paltin's report did not recommend an RTC. In her subsequent testimony, she stated that her information regarding Dr. Paltin's recommendation for an RTC came from a conversation with Student's representative Mr. Peters.

40. Later, in her report, Dr. Tackett described part of her conversation with Student:

Specifically, in regards to Pathways, he told the district it was not the right placement for him because he knew he could just leave at anytime, and knew he would. But instead of listening to the very person who knew best, they refused to listen, was placed at Pathways and inevitably as [Student] stated, he eloped form [sic] that school.

41. Once again, Dr. Tackett's report was in error. As discussed in the Factual Findings below, Student never eloped from Pathways; he eloped from the Oak Grove Center for Education, Treatment and the Arts (Oak Grove) on one occasion. Apparently,

Dr. Tackett relied upon Student's statement in forming her opinion, without verifying the facts. On cross-examination, she admitted that she was not completely sure what Pathways was.⁶ She also admitted that she did not know Student well enough to know if he was a reliable reporter of events.

42. There were other problems with Dr. Tackett's opinions. Dr. Tackett never met Student, never observed him in his school or home environment, never conducted any assessment or testing of him, never provided any therapeutic services or behavioral services to him, never spoke to any school district staff or Student's mother about her report, and admitted that she was not qualified to conduct a psychoeducational assessment. Dr. Tackett conducted only a telephone interview of Student lasting approximately 45 minutes, spoke to a therapist at Island View Residential Treatment Center, and reviewed the records provided to her by Mr. Peters.

43. Dr. Tackett has worked with Mr. Peters on due process cases a few times in the past. She testified that she expected to be paid for her expert testimony in the instant case, but at the time of the hearing she had no contract or understanding with Mr. Peters as to how much she would be paid. She denied that her payment was contingent upon Student prevailing in the case.

44. Considering all these factors, Dr. Tackett's opinions appeared to have been more influenced by the pending due process litigation, than by an objective assessment of Student's situation. While she has expertise in the area of behavior, her lack of direct, objective knowledge about Student weakens her opinions regarding the District's behavior support plan.

⁶ Both Pathways and Oak Grove will be described in more detail in the Factual Findings below.

45. The testimony of the Elementary District educators regarding the FBA was more persuasive. Dr. Adamo testified that the FBA properly identified the target behaviors, the antecedents of those behaviors and the consequences of the behaviors. She explained that the assessors chose truancy and anxiety as the target behaviors because those were the primary ones interfering with Student's learning at that time. She believed that the FBA came to the correct conclusion in determining the function of Student's behavior.

46. Dr. Adamo has practiced as both an independent educational psychologist and a school psychologist. She received her bachelor's degree in 1997, her master's degree in 2002, and her doctorate in educational psychology in 2011. She has conducted hundreds of psychoeducational assessments and has attended hundreds of IEP's.

47. Mr. Christian supported Dr. Adamo's testimony. He testified that he helped identify anxiety and school attendance as the target behaviors in the FBA. The anxiety he saw was related to Student's concern about trying to make up the work Student missed when Student was not at school. Student seemed overwhelmed by the amount of make-up work he had to do because of his truancy.

48. Mr. Christian has been a special education teacher since 1997, helped to assess Student in both May 2011 and in December 2011/January 2012, and participated in the FBA. He was one of Student's teachers in eighth grade, and was very familiar with Student. Mr. Christian agreed with Dr. Adamo's findings in the FBA.

49. Ms. Moses also testified that the FBA was appropriate. In her opinion, it properly identified what was causing the behaviors, the interventions and the consequences of the behaviors. She also believed that the behavior support plan developed by the IEP team as a result of the FBA was appropriate.

50. In addition to the opinions described above, Dr. Tackett also criticized the FBA because the assessors did not go into Student's home to observe why Student was not coming to school. However, Dr. Adamo explained that the presence of the assessors in Student's home would have changed the family dynamic and not provided the information they needed. Instead, the assessors properly relied on information from Student's mother as to what occurred in the home environment.

THE MARCH 21, 2012 IEP MEETING

51. After confirming dates with Student's mother, the Elementary District scheduled an IEP meeting for January 26, 2012, to discuss the assessment and determine whether Student should be found eligible for special education. Student's mother cancelled that meeting the day before because Mr. Peters was unable to attend. After that, the Elementary District staff made phone calls and sent letters trying to obtain new dates for the meeting. There were difficulties with rescheduling, but they were not the fault of the Elementary District. For example, on one or more occasions, Mr. Peters returned a call by leaving a message on the voice mail of a part-time employee who was not always available during the school week, so the district staff members were unaware of the messages. On another occasion, the Elementary District proposed two dates for the IEP meeting in mid-February. Mr. Peters was not available on those dates and requested two dates in late February. Dr. Adamo was not available on those dates, so other dates were proposed. During the hearing, the parties disputed whether Student's mother had specifically requested that Dr. Adamo be at the IEP meeting. Ms. Cornwall testified that Student's mother had made that request, while Student's mother denied such a request was made. Either way, it was appropriate for the Elementary District to want Dr. Adamo to attend the meeting, because she was the school psychologist who helped conduct the assessment that would be discussed at the meeting.

52. In approximately late February 2012, Student began residing with his father. He did not return to his mother's house to live until approximately the summer of 2012. He was living with his father at the time of the March 21, 2012 IEP meeting. His school attendance began to improve while he was in his father's house.

53. Ultimately, the parties were able to reschedule the IEP meeting for March 21, 2012. Student's mother attended the March 21, 2012 meeting along with Mr. Peters. Student's father participated telephonically for part of the meeting prior to his arrival. Representatives from both the Elementary District and the High School District attended.

54. The proposed IEP found Student eligible for special education under the category of emotional disturbance. The IEP included accommodations such as preferential seating and extended time for assignments. Student was placed in a general education classroom with related services including: a) specialized academic instruction done by collaboration in the general education classroom for 48 minutes daily; 2) individual counseling during the school day one time per week for 50 minutes; 3) parent counseling/training two times a month for 50 minutes each session (one session with Student's mother and one session with his father); and 4) in-home specialized academic instruction for 240 minutes per week. Although the handwritten IEP services page did not specify that the parent counseling would include parent training, a follow-up letter from Ms. Moses on March 22, 2012, made that clear.

55. Because Student would transition into high school before his next annual IEP meeting, the proposed IEP also addressed his high school program. The IEP proposed that Student would attend the Pathways program in high school.⁷ Student

⁷ Pathways is discussed in more detail below in connection with Student's first year in high school. Contrary to statements in Student's written closing argument,

would begin at Pathways during the extended school year in the summer. The individual counseling and parent counseling/training would continue during the time Student was at Pathways, through the date of the next IEP in March 2013.

56. As an accommodation for Student's anxiety and emotional issues, the IEP proposed a shortened school day for the remainder of Student's time in middle school. To make up for the school time Student missed because of his shortened school day, the IEP included in-home instruction (detailed in Factual Finding 54 above). The IEP proposed that a high school instructor from Pathways would provide the in-home instruction. This would enable Student to develop a positive relationship with the instructor and help with the transition to Pathways in high school.

57. The IEP found that Student's behavior impeded his learning and proposed a behavior support plan and behavior-related goals. The IEP goals included areas related to social-emotional functioning and anxiety, school attendance, and respecting peers and authority. The behavior support plan proposed numerous interventions and strategies to address Student's anxiety and his failure to attend school.

58. During the IEP meeting, the team identified work completion as an additional area of need for Student. The district staff indicated they would draft a new goal to address this area of need after the meeting as a proposed amendment to the IEP.

59. Student's parents did not sign the IEP on the day of the meeting. Mr. Peters, speaking on behalf of Student's mother, disagreed with the proposal for a Pathways teacher to provide the in-home instruction. He requested that the in-home instruction and the counseling be provided by non-district employees.

Student was not placed in Pathways in eighth grade; his placement remained at Dwyer Middle School.

60. The parties dispute whether Student made a request for an RTC placement during the March 21, 2012 IEP meeting. Ms. Moses testified that Student did not request an RTC at that time. Instead, Mr. Peters requested that the Elementary District pay for Student's mother to visit various proposed placements, including a private school named Mardan, which was not an RTC, and a place Mr. Peters called "Islands" which was unknown to the school district staff. The IEP meeting notes indicated that "Mr. Peters request parents be allowed to visit 4 programs including Islands."

61. Student's father signed the IEP, giving consent for the Elementary District to implement the program, on March 23, 2012. Ms. Cornwall called Student's mother to let her know that Student's father had consented to the IEP. Student's mother told Ms. Cornwall that she consented as well and that she would sign the IEP. However, Student's mother never signed her consent to that IEP.

62. On March 22, 2012, Ms. Moses drafted a letter to Student's mother and Student's father. The letter was a "prior written notice" letter in which the district formally denied the requests made by Mr. Peters for the services to be provided by non-district personnel and denied the request for the district to pay for Student's mother to visit possible RTC placements. The letter confirmed that Student's parents could visit any placement they wished, but not at school district expense.

63. The letter contained two attachments. One was a proposed plan for an educationally related mental health services assessment. The district staff proposed this assessment plan based on a request made by Mr. Peters during the IEP meeting.

64. The other attachment was a proposed amendment to the March 21, 2012 IEP. The amendment offered to add the work completion goal that had been discussed during the IEP meeting, and clarified two minor points in the IEP document (the date of the next annual IEP meeting and the fact that Student was working toward a high school diploma).

65. Ms. Moses signed and dated the proposed amendment on March 26, 2012. There was no IEP meeting held on either March 22 or March 26; instead, the district staff drafted the proposed amendment and mailed it to Student's parents. Neither parent signed the proposed IEP amendment. Neither parent gave consent for the educationally related mental health services assessment, so that assessment was not conducted.

66. During the hearing, the parties disputed who held the educational rights for Student at the time of the March 21, 2012 IEP meeting. Student's mother relied on an ex parte order from the family court issued in July 2011 that she claimed gave her sole authority. However, that temporary order was never finalized. Instead, Student's parents both held educational rights for Student at the time of the March IEP meeting.⁸

67. After Student's father signed his consent to the IEP, the Elementary District began to implement Student's eighth grade special education services. Joseph Ampudia provided the in-home instruction for Student during the remainder of his eighth grade year, along with the individual counseling and parent counseling/training called for in Student's IEP. Mr. Ampudia is a Special Programs School Psychologist and a licensed clinical social worker. He received his bachelor's degree in psychology in 1993, his master's degree in social welfare in 1996, and his Pupil Personnel Services Credential in school psychology in 2001. He has been involved with Pathways for eight years.

68. Student's school attendance improved greatly for the remainder of the 2011 – 2012 school year. His final report card for the year contained poor grades, but

⁸ The Superior Court had set a "show cause" hearing on the ex parte order in August 2011. Student's mother admitted that she never appeared at the show cause hearing. There was no evidence that the temporary ex parte order was ever made permanent.

Ms. Cornwall explained that Student still made progress. He was no longer truant and was regularly attending school. In her opinion, Student was still on course academically, even if he did not complete all the work.

69. The parties dispute whether this IEP offered a FAPE to Student. The Elementary District witnesses were consistent in their testimony that the IEP offered Student a FAPE. Mr. Christian believed that the offer was appropriate for Student. He felt it met Student's needs, and provided sufficient supports to help Student be successful in the school environment.

70. Ms. Moses agreed that the specialized academic instruction, services, and supports contained in the IEP were appropriate at the time they were offered, including the counseling and behavior support plan. In her opinion, the IEP was successful in helping Student's school attendance for the remainder of his eighth grade year. The counseling services were also successful, and Student made overall progress during that time. Student had one suspension toward the end of his eighth grade year, but Ms. Moses did not believe it showed a need for additional counseling services.

71. In Ms. Moses' opinion, at the time of the March 2012 offer, neither an RTC nor a non-public school placement was necessary to help Student make progress. She felt the proposed IEP offered Student a FAPE at the time it was made. She also opined that the eligibility category of emotional disturbance was proper for Student. In her opinion, emotional disturbance requires a finding of emotional issues over an extended period of time, and it would not have been appropriate to find him eligible prior to the March 2102 meeting.

72. Student provided no persuasive expert evidence to refute the testimony of the Elementary District witnesses. Dr. Paltin did not criticize the March 21, 2012 IEP. Dr. Tackett testified that the March 2012 IEP offer was inappropriate, but her testimony was unpersuasive, as discussed above. She testified that it was inappropriate to place

Student in a regular school setting as of March 2012 because he had been leaving school. She also opined that the IEP denied Student a FAPE because it failed to provide parent training and individual counseling. The evidence did not support her claims – the IEP did offer counseling and parent training. Student had not been leaving school at that point. Student’s truancy involved not coming to school – he did not leave school once he was there.

73. In Student’s written closing argument, Student argued that Dr. Paltin testified that the “district” [Student does not specify which district] failed to offer or provide appropriate psychological counseling, parent training, behavior services, parent counseling, or an appropriate FBA and behavior support plan. However, Dr. Paltin did not testify to any of those things.⁹

74. Student’s main contention in his written closing argument is that Student could not gain educational benefit if he was not attending school. However, Student did attend school for the remainder of his eighth grade year and he did gain educational benefit. The Elementary District’s March 21, 2012 IEP offered Student a FAPE.

THE BEGINNING OF STUDENT’S NINTH GRADE YEAR (FALL AND WINTER 2012-2013)

75. Under the terms of the March 2012 IEP, Student was supposed to start attendance at the high school Pathways program during the extended school year

⁹ Student’s written closing argument contained other errors. At one point, Student misquoted Dr. Paltin as testifying that: “Clearly, the counseling and behavioral services provided by the district at the Dwyer school, the Pathways program, an [sic] Oak Grove, were not sufficient or appropriate.” Dr. Paltin made no such statement during his testimony. Dr. Paltin was not even treating Student when Student attended Pathways or Oak Grove.

session in the summer of 2012. However, Student's father, who had physical custody of Student at that time, informed the High School District that Student would not be attending the summer session. He stated that he wished to give Student the summer off as a reward for Student's good school attendance in the spring. He said that he intended to enroll Student in the Garden Grove Unified School District in the fall. Student's father also decided to forego the counseling called for in the IEP during that summer (both Student's counseling and parent counseling).¹⁰

76. Student did not attend Pathways when the fall semester started, nor did he attend school in Garden Grove. Student's mother regained custody of Student in approximately September 2012. She enrolled Student in the High School District in September 2012 and he began to attend Pathways.

77. Pathways was developed by the High School District to deal with emotionally disturbed pupils. The program was located on the Fountain Valley High School campus. There were two classrooms in the program and most of the pupils in the program were diploma-bound. Some of the pupils in the program had depression or anxiety and required education in a smaller classroom setting. There were about 10 children in the class, all with IEP's, and the curriculum was tailored to their individual needs. Counseling was available to the pupils all day. The goal of Pathways was to get the pupils back into the general education classroom. Pathways had levels that each pupil could attain, and pupils worked through those levels as part of the program.

¹⁰ Even though Student's father resided within the jurisdiction of the Garden Grove Unified School District, the Elementary District had continued to provide Student with educational services in eighth grade while he resided in his father's home due to the nature of the custody situation between his parents.

78. Pathways permitted the pupils to leave class to go to a designated place when they needed to cool off. Under the terms of Student's behavior plan in his IEP, Student was permitted to leave his class to go to a pre-established place on campus to calm himself. This was not considered eloping from school, both because Student never left campus and because the conduct was done with permission. For example, he might leave one classroom to go work in another classroom. There was no evidence that Student ever eloped from or attempted to elope from school while he was at Pathways.

79. Student was highly resistant to attending Pathways. Student did not view himself as emotionally disturbed, and he did not want to be in Pathways. Student wanted to attend Huntington Beach High School and play on the football team. At one point in September, Student's mother tried to enroll Student at Huntington Beach High School, but the school did not have the services called for in his IEP.

80. Student began his pattern of truancy again almost as soon as he started attending Pathways. On the days he did not skip entirely, he sometimes missed part of school. He only attended about 12 full school days during the time he was enrolled in Pathways. Student did not exhibit any aggression on the days he was there.

81. The High School District scheduled an IEP meeting for October 29, 2012, to discuss the problem, but Student was moved to Otto Fischer, a juvenile court school outside the jurisdiction of the High School District, so the IEP meeting could not be held.

82. Student returned to the High School District's jurisdiction after his time at Otto Fischer. During the time Student was required to wear a tracking device as part of juvenile probation, his school attendance was perfect. As soon as the device came off, he lapsed once more into truancy.

83. Student also failed to take full advantage of his counseling services during this time. Ashley Stewart, Psy.D., a High School District school psychologist, was assigned to provide the counseling services called for in the IEP when Student started at

the high school. Her counseling consisted of cognitive behavioral therapy to address Student's needs. Her first session with him was on September 11, 2012. Because of Student's truancy, she was unable to provide him with his weekly sessions. She only saw him three or four times.

84. Dr. Stewart also provided the parent counseling/training sessions to Student's mother once a month as provided in the IEP. For the first two months, Student's mother attended the full 50-minute session. After that, Student's mother would not stay for the entire session, even when the session was telephonic. Student's mother would often deal with her own issues during the training sessions, and she seemed overwhelmed at times. Dr. Stewart explained that it is hard for a parent to focus on parent training when the parent is worried about keeping a roof over her head.

85. Dr. Stewart was not on the high school campus every day, but counseling support was embedded in Pathways, so Student could get support even on the days she was not there. Mr. Ampudia had an office in the Pathways room and could provide crisis counseling and other support.

86. The High School District noticed another IEP meeting for December 14, 2012, but Student's mother and Mr. Peters showed up late, leaving insufficient time for

the meeting to occur. The meeting had been scheduled for 10:00 a.m.¹¹ On December 21, 2012, the High School District sent a new notice for an IEP meeting to be held on January 9, 2013.

THE JANUARY 2013 IEP AND THE EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

87. Student's mother attended the January 9, 2013 meeting, along with Mr. Peters. The team discussed Student's ongoing failure to attend school and the possibility of an RTC placement. Mr. Peters provided the IEP team with an overview and history of Student's past placements, court proceedings, and academic performance. He requested that the IEP team consider an RTC placement for Student.

88. At one point near the beginning of the meeting, Ms. Moses stated: "There's no doubt in my mind we're looking at an out-of-state program for [Student] based on his needs. I'm not aware of any place in California that could meet his needs."

89. The High School District team members felt that additional assessment was necessary before the team could consider which RTC would be appropriate for Student. The team offered an educationally related mental health services assessment. As stated above in Factual Findings 63 – 65, the Elementary District had previously

¹¹ During the hearing, Student's mother explained that she had difficulty attending meetings that were set too early because of her health problems and the need to care for her baby. She testified she told that to the district staff many times. However, there was no documentary evidence to show when those communications were made. For example, there were no letters or email to show that Mr. Peters or Student's mother requested that the December 14, 2012 meeting start at a later time. Student's mother was able to attend other IEP meetings that took place in the morning, such as the January 9, 2013 IEP meeting, which was scheduled to begin at 8:00 a.m.

offered that assessment in March 2012, but neither parent had signed the assessment plan, so the assessment had never been conducted. Student's mother signed her agreement to the new assessment plan during the January 9, 2013 IEP meeting.

90. Pending the results of that assessment, the IEP team recommended one-to-one teaching for Student to prevent Student from falling further behind in his studies due to his failure to attend Pathways. The District proposed amending the IEP to add 240 minutes a week of individual instruction for Student to be provided at Huntington Beach High School after regular school hours. The District staff hoped that the location of Huntington Beach High School would entice Student to engage in the services, because of Student's desire to attend that school.

91. In addition to the individual instruction, the IEP continued to offer Pathways, individual counseling for Student, and parent counseling/training. Student's mother signed her consent to the January 9, 2013 amendment to the IEP during the IEP meeting.

92. The High School District conducted the educationally related mental health services assessment of Student in January and February 2013. The individuals conducting the assessment included Mr. Ampudia, Dr. Stewart, and Ms. Moses. The assessment included review of school records and prior assessments, an interview with Student, input from Student's mother, and input from Student's teachers and educational service providers. The assessors administered numerous assessment instruments and questionnaires related to Student's behavior and mental health, including, but not limited to: 1) Parent Adolescent Relationship Questionnaire; 2) Reynolds Adolescent Depression Scale; 3) School Refusal Assessment Scale; and 4) Beck Youth Inventories for Children and Adolescents. During the hearing, Ms. Moses explained in detail why each of the various assessment instruments was selected for the assessment.

93. The High School District assessors initially tried to assess Student in his home, but he refused to cooperate. In late January 2013, Student was admitted to the adolescent psychiatric treatment unit at College Hospital. At that point, the district assessors were able to interview Student and complete the assessment. Mr. Ampudia explained that Student was different when they saw him in the hospital than he had been in the past. Student seemed more withdrawn and defeated. Dr. Stewart testified that, after completing the assessment, she believed Student required an RTC placement.

94. The report concluded that Student was unable to gain educational benefit in his current placement due to his refusal to attend and/or noncompliance. It noted, among other things, that Student had not exhibited any elopement, substance abuse, or assaultive behaviors in the school setting.

95. The assessors did not speak with Dr. Paltin. Dr. Stewart explained that she had tried to speak with Dr. Paltin in approximately October or November 2012, but never received a call back from him. Eventually Dr. Paltin's office informed her that Student was no longer a client of Dr. Paltin.

96. At the time of Student's psychiatric hospitalization in January-February 2013, Student's mother believed it was an emergency situation. She wanted an immediate IEP meeting to place Student in a locked RTC as soon as he left the hospital. She felt he would be a danger to himself or others if that did not happen. However, as Ms. Moses explained during the hearing, the IEP process is not intended for psychiatric emergencies – there are other legal procedures that apply when a child is an immediate danger to himself or others. The IEP process is designed for educational purposes.

THE FEBRUARY 20, 2013 IEP MEETING AND FOLLOW-UP IEP MEETINGS

97. After the educationally related mental health services assessment was completed, the parties held a series of IEP meetings to discuss RTC placements and finalize the IEP. These meetings occurred on February 20, 2013, March 12, 2013, and

March 29, 2013. At each of the three meetings, the IEP team received and considered input from Student's mother and/or her representative Mr. Peters.

98. At the February 20, 2013 meeting, the team discussed the assessment and considered Student's program in light of the assessment findings. The team discussed Oak Grove and the Youth Care/Pine Ridge Academy as possible placements. The district needed to obtain releases from Student's mother to speak to the potential RTC's to see if they could accept Student into their program. Student's mother had not signed releases for those RTC programs prior to the meeting and did not do so during the meeting.

99. Based on the results of the educationally related mental health services assessment, the High School District IEP team members believed that an in-state RTC such as Oak Grove could meet Student's needs. Student's mother, on the other hand, believed that Student needed a locked, out-of-state RTC placement. While the team looked for a proper RTC placement, the High School District continued to offer Student the services from his current IEP, including the one-to-one instruction.

100. At some point at or after that February 20, 2013 meeting, Student's mother provided the IEP team with a note written by one of Student's treating physicians from his January-February 2013 psychiatric hospital stay. The note was dated February 20, 2013, and written on a prescription pad from C. Ross., M.D., at College Hospital in Costa Mesa. It stated:

This is to confirm that I attended the above patient [Student] while hospitalized from 1/29/13 – 2/7/13. Patient has recurrent episodes of severe mania which includes recurrent suicidal and homicidal impulses. Residential treatment is indicated for this level of severity. The patient would elope from unlocked placement and be a danger to self and others.

101. The High School District staff attempted to obtain releases from Student's mother so they could speak with Student's College Hospital doctors both before and after receiving Dr. Ross' note. The district staff provided Student's mother with release forms for her to sign on multiple occasions, but she failed to sign those forms. At one point in February 2013, Student's mother showed up at one of the High School District offices and signed blank releases. She did not fill out the names of Student's doctors on the release forms. The High School District staff felt those releases did not provide the required informed consent, so they continued to request that she sign proper releases. Student's mother did not sign her consent for the IEP team members to talk to Dr. Ross until after the March 12, 2013 IEP meeting.

102. When Ms. Moses eventually spoke with Dr. Ross, she asked about the basis for his conclusion that Student needed an RTC placement. She asked whether Student had a history of elopement, had attempted to elope from the hospital, and whether Student's body language during his hospitalization had indicated that he was contemplating elopement. For example, she wanted to know if Student was hyper-vigilant or spent time eying the door. In her opinion, Dr. Ross' responses did not indicate that Student was at risk for elopement.

103. On March 12, 2013, Student's IEP team met again. Mr. Peters told the team that Student needed placement in a locked, out-of-state RTC, based in part on Dr. Ross' recommendation. Student's mother had not yet signed her consent for the High School District to speak to Oak Grove, so Oak Grove could not participate in the meeting. For this reason, the conversation during the meeting concerned the need for that consent and whether Student needed any modification to his interim services.

104. Student's mother finally signed the release for the High School District staff to speak to Oak Grove after that meeting. On March 13, 2013, Ms. Moses sent a letter to Oak Grove to request that Oak Grove consider placing Student there.

105. Student's IEP team met again on March 29, 2013. A representative from Oak Grove participated in the meeting, and the team agreed to place Student at Oak Grove. The IEP contained goals related to attendance, work completion, and interpersonal relationships. The related services in the IEP included parent counseling/training, counseling for Student, and psychological consultation. Although the language of the IEP only said parent counseling, it was clear from the testimony of the Oak Grove counselor Billie Gengler that the sessions included parent training. The IEP also included ESY services for Student at Oak Grove. Student's mother signed the IEP agreeing to the Oak Grove placement.

106. The parties dispute whether Student's mother had an opportunity to participate meaningfully in the February 20, 2013 IEP meeting. During the hearing she indicated that she felt she had no choice but to agree to Oak Grove at the March 29 IEP meeting, because the only other alternative was Pathways, which Student refused to attend. Student contends that Oak Grove was presented to her as a "take it or leave it" proposition at the February 20, 2013 meeting.

107. The evidence does not support Student's contention that Student's mother could not participate in the February 20, 2013 IEP meeting or that Oak Grove was presented to her with a "take-it-or-leave it" attitude from the High School District. In the first place, there was no evidence that any formal offer of placement was made at the February 20, 2013 meeting. There were two possible placements mentioned in the IEP meeting notes, and the offer for Oak Grove was not made until the March 29, 2013 meeting.

108. All during the time of the February and March meetings, Mr. Peters provided input to the team and made it very clear that Student's mother wanted a locked, out-of-state RTC for Student. There was no evidence that the High School District staff prevented Student's mother or her representative from speaking during the

meetings. For example, the March 12 IEP meeting notes discussed Mr. Peters' input to the team. The meeting notes mention Dr. Ross' note, but state that a note written on a prescription pad was not a sufficient indication that Student required a locked RTC outside of California. Even Student's mother's testimony indicated that several placements were discussed.

109. The testimony of the High School District witnesses during the hearing shows that they gave the matter of placement a great deal of thought, particularly in light of Dr. Ross' note. Dr. Stewart testified that the IEP team had no evidence that Student needed a locked facility. She said the team considered Dr. Ross' note and recommendation, but Dr. Ross had only seen Student for seven days in a psychiatric facility. The district staff had known him for months and had never seen him elope from school. She explained that Student's own statements during the educationally related mental health assessment indicated he was not at risk of elopement -- he told the assessors that he could have left the hospital, but had never attempted it.

110. Mr. Ampudia also felt it was significant that Student had never eloped from school prior to the time of the Oak Grove offer. He felt that Oak Grove would be a good placement because it was closer to Student's home than a locked, out-of-state facility, so Student's mother could visit him there. Oak Grove could provide the counseling and emotional support Student needed. Mr. Ampudia explained that the High School District had to follow the least restrictive environment requirement, even with RTC placements, and Oak Grove was the least restrictive setting that could meet Student's needs.

111. Ms. Moses testified that the team discussed various possibilities, but ultimately offered Oak Grove at the March 29, 2013 meeting, because that placement appeared sufficient to meet Student's needs in the least restrictive environment. Even after she reviewed Dr. Ross' note and spoke with Dr. Ross, she still believed Oak Grove

was appropriate. She pointed out that the Oak Grove facility was secure in the evenings and the pupils were supervised. Student had never eloped or expressed a desire to elope before.

STUDENT'S PLACEMENT IN OAK GROVE

112. Oak Grove is a residential treatment facility located in California. It contains both dormitories and classrooms for the pupils who live there. The three dormitories house approximately 76 students. There is a fence around the facility, but the facility is not locked. At night, each of the dormitories is supervised by a staff member who is aware whenever any pupil attempts to leave a dormitory bedroom.

113. Oak Grove provides a therapeutic milieu for pupils, with a structured environment and staff trained for behavioral and therapeutic interventions. There is a licensed therapist on the Oak Grove campus at all times. The pupils earn points based on their behavior during the day and can earn various privileges by accumulating those points. The Oak Grove staff has monthly treatment team meetings in which they discuss each pupil's progress. Within the first 30 days of residence at Oak Grove, the pupil is evaluated.

114. Academic classrooms have approximately 12 students per class, as well as a teacher and teachers' aides. All 15 of the teachers at Oak Grove are credentialed special education teachers. When the pupil is not in class, the pupil can gain assistance with homework through homework groups, staff, and peer assistance.

115. Student began his placement at Oak Grove on April 2, 2013. In addition to Student's residential placement, Oak Grove provided parent training/family therapy to Student and his mother.

116. On April 19, 2013, Student was granted an authorized pass to leave with his mother for the weekend. He was supposed to return by nine o'clock p.m. on Sunday, April 21. He did not return until the morning of May 3. Oak Grove contacted Student's

parents during the time he was gone and received conflicting information about why he had not returned on time.

117. After April 19, 2013, Oak Grove did not authorize Student to leave the campus at any time. However, Student's parents took him from the facility without authorization on several occasions. On May 10, 2013, Student's mother came to meet with an Oak Grove therapist. She chose to take Student off the Oak Grove grounds, against the advice and authorization of the Oak Grove staff. During the hearing, Student's mother admitted that she removed Student from the Oak Grove facility on that date. She stated that she had only intended to have him eat lunch with the family, but he refused to return to Oak Grove after the meal. Student's father returned Student to Oak Grove on May 12, 2013.

118. On May 18, 2013, Student's father came to the facility and took Student away without authorization and against the advice of the Oak Grove staff. He returned Student to Oak Grove on May 20, 2013, the day of Student's next IEP meeting.

119. On May 20, 2013, Student's IEP team met again. Both of Student's parents and Mr. Peters participated in the meeting. Oak Grove representatives at the meeting reviewed Student's academic and social/emotional goals and found them to be appropriate. Student had not been aggressive and had not made any attempts to leave Oak Grove without permission (except when his parents took him). The Oak Grove staff expressed concern about the incidents in which Student's parents removed Student from Oak Grove without authorization and discussed the need for collaboration between Student's family and the facility. Mr. Peters stated that Student was not appropriately placed at Oak Grove and asked the High School District to consider other possible placements. The team discussed other possible placements, including more restrictive placements outside of California, but the High School District team members

believed that Student was appropriately placed at Oak Grove, and did not agree to change the placement.

120. On approximately June 6 or 7, 2013, Student was scheduled for a medical appointment in Huntington Beach. Oak Grove staff transported him to the appointment and planned to transport him back to Oak Grove. However, Student's father arrived at the physician's office after a call from Student. Student's father took Student with him, without authorization from Oak Grove, and against the advice of the Oak Grove staff. Student's father did not return Student to Oak Grove until 10:30 p.m. on June 10, 2013.

121. On June 14, 2013, Oak Grove staff transported Student to the courthouse for a court appearance. On the way back, they stopped at a fast food restaurant to get lunch. Student's father met them there and took Student with him, against the advisement of Oak Grove staff. Oak Grove staff called the police, but the police department informed them that it was a family court custody matter and refused to take action.

122. On July 8, 2013, the family court ordered Student's father to return Student immediately to Oak Grove. Instead, he dropped off Student at Student's mother's home. Student's mother did not return Student to Oak Grove.

123. As of July 12, 2013, Student's mother had still not returned him to Oak Grove. At that time, Oak Grove sent Student's mother an email indicating that they intended to discharge him and asked her to pick up his belongings. The High School District staff exchanged emails with Student's mother about the need to return Student to Oak Grove. Student's mother did not return Student to Oak Grove and, at one point, indicated she could not do so because he had been discharged.

124. Residential facilities such as Oak Grove have only a certain number of beds available. When a pupil is absent for long time and not returning, the facility gives the bed to someone else. In Student's case, there were a few days during July in which Oak

Grove did not have a bed available for Student. However, a bed opened up shortly thereafter, and on August 1, 2013, the transport company picked up Student and took him back to Oak Grove.

125. On August 2, 2013, Student eloped from Oak Grove. He walked off the Oak Grove campus around lunchtime without permission. This was the first time that he had left the Oak Grove campus without one of his parents or the Oak Grove staff since he started there. Student telephoned his mother who telephoned Oak Grove. The Oak Grove staff located him at a grocery store a short distance away but he ran from the staff member. Oak Grove contacted the police and Student's juvenile court probation officer. Student's father picked Student up that day, but did not return him to Oak Grove. Student eventually ended up at his grandmother's house.¹²

126. On August 14, 2013, Oak Grove sent the High School District a 30-day notice of intent to discharge Student. Oak Grove reported that it could no longer provide effective and comprehensive treatment to Student in light of his multiple unauthorized absences.

127. Despite the parental interference with Student's program, Student gained educational benefit while attending school at Oak Grove. When he was present at the facility, he participated in Oak Grove activities, went to class, and worked through the

¹² Although this was Student's maternal grandmother, Student's mother did not inform the High School District where he was. The High School District staff learned he was safe and living at his grandmother's house from Student's probation officer in approximately mid-August. As late as September 30, 2013, Student's attorney alleged in the due process complaint: "Currently, as of the date of the filing of this complaint, [Student] is still missing."

program successfully. His report card grades as of June 14, 2013, showed mostly B's and C's, and he received partial high school credits during his time there.

128. The parties dispute whether the two placements offered by the High School District during the 2012-2013 school year – Pathways and Oak Grove – were appropriate for Student. The parties also dispute whether the various counseling and other services offered by the IEP's during that school year were appropriate.

129. Student relies on the testimony of Dr. Tackett to argue that the two placements and services offered that year were inappropriate. Dr. Tackett opined that, if a pupil cannot go to school because of a disability and therefore cannot get the academic education he needs, a locked RTC is necessary. She did not believe there was a difference between a pupil eloping or just not showing up to school – either way the pupil was not there. She felt that Dr. Ross' prescription pad note was a notice to the High School District that Student required a locked RTC. In her opinion, the failure to offer a locked RTC in February and March 2013 denied Student a FAPE. She opined that he needed a locked RTC because he was "constantly skipping out on school."

130. On cross-examination, when asked how she could give an opinion about Pathways when she was not completely sure what Pathways was, she said her opinion was based on whether or not it was a locked facility – without a locked facility, Student would elope. She believed that Student should have been placed in a locked, out-of-state facility as early as September 2011. She also believed that Pathways was inappropriate because the behavior plan allowed Student to leave class when he wished – in her opinion that was giving Student permission to do exactly what the school was trying to stop him from doing.

131. Ms. Moses opined that the Pathways program was appropriate for Student at the time it was offered. She did not believe an RTC was necessary for Student at that time. In her opinion, the program and services offered were likely to help Student make

progress in the curriculum and meet his goals. Dr. Stewart also felt that Pathways was an appropriate placement for Student, but he never gave it a chance. She did not think adding additional counseling services to Student's IEP would have helped. Student was already receiving outside counseling which, according to Student's mother, was not successful.

132. The High School District witnesses' testimony is persuasive on this issue. As of March 2012 and the start of Student's ninth grade year, the IEP offer for placement in Pathways with counseling and other related services was reasonably calculated to provide Student with educational benefit in the least restrictive environment. Contrary to Dr. Tackett's opinion, there was nothing wrong with allowing Student to leave class to go to a pre-arranged spot to calm down. It was not the same as truancy, nor was it eloping from school. There was nothing to indicate that Student required the highly restrictive setting of an RTC at that point, much less a locked, out-of-state RTC. There was no denial of FAPE.

133. Ms. Moses also testified that the offer of Oak Grove was appropriate at the time it was made. At that point, Student was not attending school and was not making progress. Even though Oak Grove was not a locked facility, the dorms were secure and the pupils were supervised. At the time of the Oak Grove offer, Student had never eloped from school or expressed a desire to elope. Oak Grove was closer to Student's home than the out-of-state, locked facilities, so Student could remain in contact with his mother and younger sibling. During those times when Student's parents allowed him to attend Oak Grove, he was participating in counseling and beginning to comply more with the rules. Ms. Moses also opined that he did well academically during those times that he attended.

134. Ms. Moses believed that Student would have been successful at Oak Grove if his parents had not kept taking him out. In her opinion, the conduct of Student's

parents in constantly removing him from Oak Grove influenced his decision to elope – he thought it was behavior that his parents would enforce. Each time Student’s parents took him without authorization, they sent him a message that they did not support the program.

135. Mr. Ampudia, Dr. Stewart, and Billie Gengler, Clinical Director for Oak Grove, also testified that Oak Grove was an appropriate placement for Student at the time the High School District made the offer. It met Student’s needs for counseling, emotional support, and family visits. Student was stable and benefitting from therapy when he was there. Ms. Gengler became Student’s therapist at Oak Grove in approximately May 2013. She believed Student’s school avoidance was mostly the result of learned behaviors, not the result of a significant psychological impairment. He did not have any external motivators to want to go to school. The Oak Grove program had a level system to help motivate Student.

136. The evidence supports the High School District’s position on this issue. Oak Grove was the least restrictive environment appropriate to meet Student’s needs as of March 2013. The placement and services offered there were reasonably calculated to provide Student with educational benefit. Dr. Tackett’s reliance on Dr. Ross’ prescription pad note was not persuasive. Dr. Ross did not testify at the hearing or provide any other input to the case. When Ms. Moses spoke with him, his answers did not demonstrate that Student was at risk for elopement. There was no need for a locked, out-of-state RTC at that time.

137. In his written closing argument, Student mentioned an incident in which Student was supposedly threatened by pupils at Oak Grove who were using drugs. However, there was no evidence that this incident, even if true, caused Student’s problems at Oak Grove. Instead, his parents’ actions in taking him away from the facility

without authorization undermined the Oak Grove program and fueled Student's eventual elopement.

THE SEPTEMBER 23, 2013 IEP MEETING AND OFFER

138. Student filed an initial due process case with OAH in approximately August 2013. Student eventually withdrew that case prior to hearing, but the parties held a resolution session in that case, as required by law. During that resolution session, the parties discussed possible RTC placements for Student besides Oak Grove.

139. On August 30, 2013, Crystal Bejarano, Psy.D., Director, West Orange County Consortium for Special Education, sent a letter to Student's mother which, among other things, requested her to sign authorizations for the district to contact three out-of-state RTC's about Student – Provo Canyon, Island View, and Copper Hills Youth Center. The letter also requested permission for district staff to speak with Student's probation officer in order to help coordinate the interstate transfer with the probation department.

140. Dr. Bejarano's August 30, 2013 letter also included an IEP meeting notice for a meeting to be held on September 6, 2013, at 11:00 a.m. Mr. Peters telephoned the afternoon before the meeting to state he could not attend the meeting and would send a letter requesting new dates.

141. On September 9, 2013, Mr. Peters faxed copies of authorizations signed by Student's mother to allow the High School District to contact Island View and Copper Hills Youth Center. Student's mother did not sign an authorization for Provo Canyon.

142. On September 13, 2013, Student's attorney Mr. Collisson wrote to the attorney for the High School District offering various dates for an IEP meeting, including September 23, 2013. Mr. Collisson's letter recounted a history of events in which he stated, among other things, that at the March 21, 2012 IEP meeting, Student's mother

had requested that Student be placed at "Island View, or Provo Canyon, which are locked RTCs in Utah...."

143. Student's IEP team met again on September 23, 2013, one of the dates proposed by Mr. Collisson. Student's mother and Mr. Peters attended the meeting. The team considered various locked RTC placements for Student, including Island View, Provo Canyon and Copper Hills. Mr. Peters provided input on behalf of Student's mother and gave the team information about Island View.

144. All three of the RTC's considered by the team had similar therapeutic components, but the High School District IEP team members did not believe Island View would be appropriate for Student because it was not a completely locked facility – it had only locked dormitories – and because it did not provide the same level of special education or academic instruction as the other two placements. Student was already behind on his high school credits after having missed so much school, and the High School District IEP team members believed that Provo Canyon or Copper Hills would provide greater opportunity for Student to make up his missed high school credits. In addition, Provo Canyon and Copper Hills were completely locked facilities with fences to prevent elopement.

145. After further discussion, the High School District offered an RTC placement for Student at Provo Canyon in Utah. In addition to the therapeutic milieu at Provo Canyon, the IEP offered psychological services of 60 minutes per month, individual counseling one time a week for 60 minutes, group counseling two times a week for 50 minutes per session, parent counseling two times a month for 60 minutes a session, liaison services between the RTC staff and the High School District staff, and extended school years services.

146. On October 2, 2013, Mr. Collisson wrote a letter, received by the High School District on October 3, 2013, in which he gave notice that Student's mother would

be placing Student at Island View. The letter stated, in part, that the "District initially recommended the Oak Grove facility, which has already been proven to be inadequate for [Student's] needs, and now advocates Provo Canyon, which is unacceptable for various reasons that have been discussed at length with your staff."

147. Contrary to Mr. Collisson's statement, Student's objections to Provo Canyon were never made clear to the High School District IEP team members. Even during the hearing, it was not completely clear why Student's mother objected to Provo Canyon at the time of the September 23, 2013 meeting. Comments made during the hearing indicated that Student's mother objected to Provo Canyon because it was a completely locked facility with high walls to prevent pupils from eloping. However, until September 23, 2013, that seemed to be precisely what Student had been seeking for placement. Mr. Collisson's letter written only 10 days before the meeting (described in Factual Finding 142 above), specifically mentioned Provo Canyon. Mr. Peters had also mentioned Provo Canyon as a possible placement when he objected to Oak Grove in a letter dated February 21, 2013.¹³

148. In Student's written closing argument, Student also objected to Provo Canyon because the boys and girls live at separate facilities. Student claims that Student's IEP included a goal related to communicating with girls. However, there was no such goal in his IEP. Instead, Student's interpersonal relationships goal involved

¹³ Student's proposed remedies in the due process complaint filed on September 30, 2013, included a request for placement in a locked RTC. It was not until the prehearing conference on January 31, 2014, that Student changed that request to a "locked housing facility" at an RTC, apparently to distinguish Provo Canyon from Student's preferred placement of Island View.

associating with a peer or adult after a conflict. There was nothing specific about girls in that goal.

149. On October 9, 2013, the High School District sent a response to Student's mother explaining that the High School District believed Island View was not an appropriate placement, and that if Student's mother chose to place Student there, it would be at her own expense. Student began attending Island View in Utah on October 4, 2013, at his mother's expense.

THE PROVO CANYON PLACEMENT PROPOSED IN THE SEPTEMBER 23, 2013 IEP

150. Provo Canyon provides a therapeutic milieu for pupils ages eight to 18. All pupils there had challenges in their previous school setting in conjunction with emotional disorders or behavioral problems. The facility provides a structured program with constant supervision of the pupils. Every 15 minutes, the staff must document each pupil's location and status. There is a perimeter fence and the dorm areas are locked. They have three levels of restrictions and take special precautions if a pupil is at risk for elopement. In order to participate in off-grounds or on-grounds activities, the pupils must demonstrate that they are not at risk for elopement. There are separate campuses for boys and girls, located approximately 10 miles apart.

151. The maximum class size at Provo Canyon is nine pupils. Classes tend to have between three and nine pupils. The smaller class sizes allow for more individualized support. The staff uses cognitive behavior therapy to address depression and anxiety. Individual and family counseling are provided, and the pupils see a psychiatrist on a regular basis. Provo Canyon provides parent training and counseling as well. The staff, including the kitchen and maintenance staff, are trained to handle pupils who have problems with aggression. All of their teachers are special education teachers. Pupils can earn the equivalent of 90 units of California high school credit in a year.

152. During the hearing, Ms. Moses opined that Provo Canyon was an appropriate placement for Student at the time of the September 23, 2013 IEP meeting. It was secure to prevent elopement by Student. It could provide the counseling and therapeutic services Student and his family needed, and could help him make up lost high school credits. Ms. Moses also felt that the related services called for in the September 23, 2013 IEP were sufficient to meet Student's needs.

153. Dr. Bejarano also testified that the proposed placement and services were appropriate at the time of the offer. Dr. Bejarano received her bachelor's degree in physical education in 1999, her master's degree in school psychology in 2003, and her doctorate in educational psychology in 2007. She has worked in the past as a school psychologist and a program specialist, and she has taught university classes related to school psychology.

THE REQUESTED REMEDIES OF STUDENT AND THE HIGH SCHOOL DISTRICT

154. If a denial of FAPE is found in the instant case, Student requests that the two school districts be required to fund Student's placement at Island View, among other remedies. As discussed in the Legal Conclusions below, a special education due process case considers the appropriateness of the school district's proposed placement, not the parent's preferred placement. However, because Student has requested Island View as a remedy, some Factual Findings regarding the facility are necessary.

155. Island View is a residential facility located in Utah. It provides a therapeutic milieu for the pupils with small class sizes. The pupils work through a level system as they progress therapeutically in the placement. There are two special education teachers on the Island View campus. One is full-time in the classroom. There are 53 pupils at Island View, about 10 of whom need the help of a special education teacher. Island View pupils earn about 60 California high school credits during the school year, but Student could earn an additional 30 credits during the summer session.

156. Island View is not a locked RTC; the dormitory area of the school is locked, but not all the other areas of the campus are locked. When a pupil is at risk for elopement, staff members walk the pupil between buildings. They might also keep the pupil in the locked dorm and bring all meals and education to the pupil there.

157. Student has been attending Island View since October 2013, but, as of the time of the hearing, Student's mother had not paid any of the tuition charged by Island View. She has only been paying about \$100.00 a month for miscellaneous expenses. She testified that she signed a promissory note with Island View. She explained that, if the High School District is not ordered to pay for Island View, Student's grandmother will have to take out a reverse mortgage on her house to pay for Student's time there.

158. On October 7, 2013, Student attempted to elope from Island View. He was quickly apprehended by Island View staff and brought back to the facility. There was no evidence that Student attempted to elope after that time.

159. Dr. Tackett, Student's mother, and the two Island View employees who testified during the hearing all believed that Island View was and is an appropriate placement for Student. Student's mother explained that, prior to Student's placement there, she had researched the facility and believed it could meet Student's needs.

160. The High School District experts did not believe that Island View would be sufficient to meet Student's needs. Ms. Moses explained that it was not a completely secure facility – although the dorms were locked, the rest of the campus was not. In her mind, there was little difference between the situation at Island View and Oak Grove. The IEP team had already tried that type of facility for Student and it had not been successful. In addition, she was concerned that Island View had limited special education staff to meet Student's academic needs. She did not believe that Island View could offer sufficient high school credits to make up for the time Student had lost.

161. For the remedy in the High School District's portion of the case, the district has requested permission to implement its September 23, 2013 IEP offer and place Student at Provo Canyon in Utah. The experts disagreed about what would happen if Student were to be moved from Island View to Provo Canyon at the present time. Dr. Tackett thought it would be a mistake to remove Student from Island View, because for the first time, Student has been successful in a school setting. She believed Student did not need the more restrictive setting of Provo Canyon. According to her testimony, Student felt that Provo Canyon would be like jail. The two Island View witnesses were also concerned that Student might see the transition to a more restrictive setting as punishment, and it might cause regression in his behaviors.

162. Ms. Moses, on the other hand, testified that Student had not had problems with transitions in the past. While it might take him a while to make the transition, she did not believe the transition would cause Student to regress. In her opinion, Provo Canyon would still provide greater security and high school credit recovery for him.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA

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

with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

3. The congressional mandate to provide a FAPE to a child includes both a procedural and a substantive component. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (*Rowley*) (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690], the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the district is required to comply with statutory procedures. Second, a court will examine the pupil's IEP to determine if it was reasonably calculated to enable the student to receive educational benefit. (*Id.* at pp. 206 - 207.)

4. In *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, supra*, 458 U.S. at p. 201.) *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 "sufficient to confer some educational benefit" upon the child. (*Ibid.*)

5. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island*

School Dist. (9th Cir. 2010) 592 F.3d 938, 950 – 951.) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

6. Not every procedural violation of IDEA results in a substantive denial of FAPE. (*W.G. v. Board of Trustees of Target Range School District* (9th Cir. 1992) 960 F.2d 1479, 1484.) According to Education Code section 56505, subdivision (f)(2), a procedural violation may result in a substantive denial of FAPE only if it: (a) impeded the right of the child to a FAPE; (b) significantly impeded the opportunity of the parents to participate in the decision making process regarding the provision of a FAPE to the child of the parents; or (c) caused a deprivation of educational benefits.

7. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) The Ninth Circuit has endorsed the “snapshot rule,” explaining that an IEP “is a snapshot, not a retrospective.” The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*)

8. In a special education administrative proceeding, the party seeking relief has the burden of proof. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student has the burden of proof in this proceeding with respect to the issues raised in Student’s due process hearing request and the High School District has

the burden of proof with respect to the issue raised in its due process hearing request. There is a two-year statute of limitations for IDEA cases. (Ed. Code, § 56505, subd. (l).)

ISSUE 1: FROM SEPTEMBER 30, 2011, THROUGH THE END OF THE 2011 – 2012 SCHOOL YEAR, DID THE ELEMENTARY DISTRICT DENY STUDENT A FAPE BY FAILING TO ASSESS STUDENT APPROPRIATELY IN THE AREAS OF PSYCHOLOGY, BEHAVIOR, AND COUNSELING?

9. The requirements for special education assessments are set forth in the law. Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) The request for an initial assessment to see if a child qualifies for special education and related services may be made by a parent of the child or by a state or local educational agency. (20 U.S.C. § 1414(a)(1)(B).) After the initial assessment, a school district must conduct a reassessment of the special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) A child must be assessed in all areas of suspected disability. (Ed. Code, § 56320, subd. (f).) There are numerous statutory requirements for the manner in which a district must conduct an assessment. (See, e.g., Ed. Code, §§ 56320 – 56330.)

10. Before discussing what is at issue with respect to the Elementary District's assessments in the instant case, it is important to note what is *not* at issue. The Elementary District's assessment in May 2011 occurred prior to the start of the statute of limitations period for this case. Student may not challenge the findings of that assessment. Likewise, the Elementary District's initial determination in June 2011 that Student did not qualify for special education is also outside of the statute of limitations. In addition, because neither of Student's parents signed their agreement to the

proposed educationally related mental health services assessment in March 2012, Student cannot object to the Elementary District's failure to conduct that assessment.

11. The assessment that is at issue in the instant case is the Elementary District's December 2011/January 2012 assessment. Student did not meet his burden to show that the Elementary District failed to assess him appropriately in the areas of psychology, counseling and behavior. The uncontroverted testimony of the district's assessors showed that the psychoeducational assessment was comprehensive, conducted according to all the required laws, and was sufficient to address Student's needs in the areas of psychology, counseling and behavior. The Elementary District acted in a timely fashion to assess Student based on the request of Student's mother and the new information provided by Dr. Paltin and the psychiatric hospital. The assessors administered multiple tests and assessment instruments specifically designed to examine Student's social, emotional, and behavioral health.

12. In his written closing argument, Student concentrates on the FBA. Student contends that the Elementary District should have conducted a functional analysis assessment, not an FBA, and contends that the district conducted the FBA improperly.

13. Student failed to meet his burden to show that a functional analysis assessment was necessary. The Elementary District witnesses were persuasive in their testimony that Student's behavior at school was not serious enough to require a functional analysis assessment. While Student's tumultuous home life and the ongoing dispute between Student's parents may have led to aggressive episodes by Student at home, his behavior at school amounted to little more than the types of altercations typical for middle school boys. In footnote two of Student's written closing argument, Student listed a series of behaviors that Student apparently believed necessitated a functional analysis assessment. Most of those behaviors involved incidents at Student's home and some of them did not even occur until after the date of the Elementary

District's assessment and FBA. Nothing in that list required the Elementary District to conduct a functional analysis assessment.

14. The Elementary District assessors were also persuasive in their testimony that the FBA properly targeted truancy and anxiety as Student's problem behaviors. Those were the behaviors that hampered Student's progress in school. Dr. Tackett's testimony to the contrary was not persuasive. She had very little personal knowledge of Student and relied upon what was told to her without making a careful review of the documentation to check the statements.

15. Student's arguments in his written closing argument do not change this. In an apparent confusion between the two school districts and the time periods at issue in this case, Student's written closing argument relied upon the testimony of Dr. Stewart to argue that Student only attended "four counseling sessions between September 2011 and February 2013." That statement is in error. Dr. Stewart was a *high school* employee who was not involved with Student during his time with the Elementary District. Mr. Ampudia provided the counseling during Student's eighth grade year.

16. The evidence showed that the Elementary District's assessment and FBA were appropriate, comprehensive, and sufficient to address all of Student's educational and behavioral needs. Contrary to claims in Student's written closing argument, Student's attendance at school improved greatly after the FBA was conducted and the IEP was implemented, and there was no need for further assessment. There was no denial of FAPE.

ISSUE 2: DID THE ELEMENTARY DISTRICT DENY STUDENT A FAPE BY FAILING TO IDENTIFY STUDENT'S ELIGIBILITY APPROPRIATELY?

17. Student's second issue seems to address the eligibility category of emotional disturbance found by the Elementary District in the March 2012 IEP. However, at the start of the hearing, Mr. Peters indicated that the issue was really about whether

the Elementary District should have found Student eligible for special education prior to March 21, 2012. Even Student's written closing argument concedes that Student "was clearly, as the experts described, emotionally disturbed."

18. Student failed to bring in sufficient evidence to show that the Elementary District erred by failing to find Student eligible for special education sooner. Instead, the evidence showed that the Elementary District acted according to law at all times. At the start of Student's eighth grade year, Student was not eligible for special education based on the prior assessment. The assessment and IEP meeting occurred before the statute of limitations period and Student never challenged them. Student cannot do so now. When Student's mother requested a new assessment, the Elementary District agreed to conduct that assessment based on new information, even though it had been less than a year since the prior assessment. (See Ed. Code, § 56381, subd. (a)(2).)

19. Once Student's mother signed her agreement to the assessment plan, the Elementary District conducted the assessment and prepared a report dated January 25, 2012. Student brought in no evidence to show that the assessment was not timely completed (given the intervening winter break). The Elementary District attempted to hold a meeting as soon as the report was ready. It was Student who cancelled that meeting. The district staff then made numerous attempts to schedule another meeting, and a meeting was eventually held on March 21, 2012. Any delay in holding that meeting was not due to the fault of the Elementary District.

20. The Elementary District acted promptly and properly at all times at issue in this case. Student did not meet his burden to show a denial of FAPE based on the failure to find Student eligible for special education prior to March 21, 2012.

ISSUE 3: DID THE ELEMENTARY SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO PLACE STUDENT IN A LOCKED HOUSING FACILITY AT AN RTC?

21. The RTC issue is the heart of Student's case. Student contends that he should have been placed in an out-of-state RTC with a locked housing facility at all times during this matter. However, Student brought in no persuasive evidence to show that Student needed a locked RTC during his eighth grade year.

22. At the time of the March 21, 2012 IEP meeting, the Elementary District had no reason to believe that Student required a locked RTC to gain educational benefit. There was no evidence that Dr. Paltin ever told the IEP team that Student required a residential placement. When Dr. Paltin spoke with Student's mother about an RTC, his concerns dealt, in part, with matters in Student's home such as the safety of Student's younger brother. Dr. Ross' prescription pad note was not written until the following year, after Student was in the jurisdiction of the High School District, so the Elementary District could not have considered it. Dr. Tackett's opinion was not rendered until shortly before the hearing, and her opinion was unpersuasive for all the reasons discussed in the Factual Findings above. While Student's mother seems sincere when she testified that she wished her child to be in an RTC since he was 10 years old, her concerns seem to involve issues in the home, far more than those in the school.

23. The testimony of the Elementary District witnesses on this issue was persuasive. Based on the assessment and what they knew about Student's history, as of March 21, 2012, it was objectively reasonable for them to conclude that, given an IEP, a modified schedule, and a behavior plan, Student's attendance at school would improve. In fact, Student's school attendance *did* improve for the remainder of the eighth grade school year while he was residing with his father.

24. Student failed to meet his burden to show that the placement proposed in the March 21, 2012 IEP was inappropriate for Student's eighth grade year. There was no denial of FAPE.

ISSUE 4: DID THE ELEMENTARY DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE A) BEHAVIOR SERVICES; B) PARENT TRAINING; C) FBA; D) PSYCHOLOGY/COUNSELING SESSIONS; AND E) BEHAVIOR HEALTH COUNSELING AND PSYCHOLOGIST SERVICES FOR STUDENT'S PARENT?

25. Student contends that the IEP offer made by the Elementary District in March 2012 failed to contain adequate related services to meet Student's needs. The Elementary District disputes that contention.

26. California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.) "Related Services" include 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, and must be provided "as may be required to assist an individual with exceptional needs to benefit from special education...." (Ed. Code, § 56363, subd. (a).)

27. Student's issues regarding related services have been grouped together for purposes of this Decision, because the evidence regarding each of the related services is similar. Ms. Moses and the other Elementary District witnesses testified that the related services offered in the March 21, 2012 IEP were appropriate to meet Student's needs. Student did not bring in persuasive expert evidence to counter their testimony – Dr. Paltin did not criticize the March 21, 2012 IEP, and Dr. Tackett was not a persuasive witness.

28. Student's written closing argument is confusing with respect to the related services, because it mixes up the evidence regarding the two school districts. In addition, it contains some inaccurate statements regarding the evidence at hearing.

29. With respect to behavior services, Student argues that the behavior services offered by the Elementary District consisted, in part, of Pathways. That is not correct. Pathways was a high school program. Student relies upon the testimony of Dr. Stewart to show that Student was not receiving his counseling services, but she was a high school counselor and did not provide services to Student when he was in the eighth grade. Instead, Mr. Ampudia did. Student claims that Dr. Paltin testified the behavioral services offered by the Elementary District were not appropriate, but Dr. Paltin testified to no such thing. Student also criticizes the Elementary District's failure to take data regarding the behaviors, but because Student's primary behavior was truancy, every time the school took attendance, it was taking data regarding the behavior plan. The behavior services were successful in eighth grade and Student's attendance improved.

30. With respect to parent training, Student contends that no parent training services were offered in the March 21, 2012 IEP. That statement is inaccurate. The March 21, 2012 IEP offered parent counseling/training two times a month for 50 minutes each session (one session with Student's mother and one session with his father). Although the handwritten IEP document did not specifically use the word "training," Ms. Moses' letter the following day clarified the matter.

31. With respect to the FBA, the testimony of the Elementary District's assessors was persuasive that the District correctly targeted the behaviors that were interfering with Student's education, determined the antecedents and consequences of those behaviors, and determined that function of those behaviors. Dr. Tackett's testimony to the contrary was not persuasive -- she had not assessed Student, had very

little direct knowledge of Student, and was not an objective witness regarding Student's situation.

32. With respect to the psychology/counseling sessions, Student relies upon Dr. Paltin's testimony to claim that the services were inadequate. However, Dr. Paltin never criticized any of the two districts' IEP's and never said that additional services were needed to provide Student a FAPE. Even if he testified that additional services might be beneficial for Student, that testimony is far different than saying those services were required.

33. With respect to behavioral health counseling and psychologist services for Student's parent, Student brought in no persuasive evidence to show that the offer of 50 minutes of counseling/parent training with each parent per month was inadequate. Dr. Paltin did not testify that the offered service was inadequate. Dr. Tackett was not a psychologist, did not assess Student or Student's parents, and was not persuasive on the issue.

34. Student failed to meet his burden to show that the related services offered in the March 21, 2012 IEP were insufficient to meet Student's needs. The testimony of the Elementary District witnesses was persuasive that the services were sufficient to meet Student's needs and enable him to benefit from his special education. There was no denial of FAPE.

ISSUE 5: DID THE ELEMENTARY DISTRICT DENY STUDENT A FAPE BY FAILING TO PERMIT STUDENT'S CUSTODIAL PARENT APPROPRIATE PARTICIPATION IN THE IEP MEETING HELD ON MARCH 26, 2012?

35. Student contends that Student's mother should have been permitted to participate in the March 26, 2012 IEP meeting. The law provides that, if an IEP meeting is held, at least one parent of a child should be in attendance. (Ed. Code, § 56341.5, subd. (a).)

36. The evidence showed that there was no March 26, 2012 IEP meeting. There was a March 21, 2012 IEP meeting, which both of Student's parents attended. At that meeting, there was a discussion regarding the need for an additional goal. After the meeting, Ms. Moses mailed a proposed addendum to the IEP offer which contained the new goal and two minor corrections to the earlier IEP document. She dated her proposed addendum March 26, 2012. She testified that she did not attend an IEP meeting for Student on March 26, 2012, and she was aware of no meeting relating to Student which occurred that day.

37. Aside from the date on that one addendum document, there was no evidence whatsoever of an IEP meeting held for Student on March 26, 2012. Student failed to meet his burden on this issue. There was no procedural violation and no denial of FAPE.

ISSUE 6: DID THE HIGH SCHOOL DISTRICT DENY STUDENT A FAPE FROM JUNE 2012 THROUGH SEPTEMBER 30, 2013, BY FAILING TO CONDUCT IEP MEETINGS IN A TIMELY AND APPROPRIATE MANNER?

38. The law requires IEP meetings to be held at least annually, when requested by a parent or teacher, after an assessment is performed, or when a child is not making anticipated progress. (Ed. Code, § 56343.)

39. In the instant case, the High School District was constantly holding or scheduling IEP meetings for Student. Student began attending high school in mid-September. As soon as it became clear that his truancy was beginning again, an IEP meeting was scheduled for October 29. It could not be held because Student was transferred to the jurisdiction of the juvenile court schools. After he came back to the jurisdiction of the High School District, the district scheduled another IEP meeting for December 14, 2012. When the meeting could not be held because Student's mother and Mr. Peters did not show up in time, the meeting was swiftly rescheduled for January 9,

2013, and was held on that date. Meetings were subsequently held on February 20, March 12, March 29, and May 20. Student's IEP team was meeting almost once a month during that time.

40. Student argues that Student's mother asked the district not to set meetings in the morning, but the evidence did not establish when that request was made.¹⁴ For example, there was no evidence to show that Student's mother or her legal counsel requested that the High School District change the start time of the December 14 meeting. Many of the other early meetings Student mentions in the written closing argument were meetings that Student's mother attended. There was absolutely no evidence to support Student's contention that the High School District "purposely" delayed the IEP process by setting meetings at a time too early for Student's mother to attend.

41. Student also contends that the High School District committed a procedural violation of special education law by not holding an emergency IEP meeting to place Student in an RTC immediately after his January-February 2013 hospital stay. However, as Ms. Moses pointed out in her testimony, the IEP process was never intended to deal with emergencies. The IEP process is intended to deal with the pupil's educational needs, not behavioral emergencies in the home. The High School District did exactly what it was supposed to do – it conducted an educationally related mental health services assessment and then scheduled an IEP to discuss the results of that assessment. The IEP team continued to meet until an RTC placement (Oak Grove) was

¹⁴ Once again, Student's written closing argument confuses the two districts. For example, Student discusses calls Student's mother supposedly made to Ms. Cornwall about scheduling meetings in the afternoon. Ms. Cornwall was an employee of the Elementary District and was not involved with Student's program in the ninth grade.

agreed upon. After Student started at Oak Grove, the IEP team met again in May to review that placement. At that time the IEP team stressed the need for Student's parents to cooperate with the Oak Grove placement and to stop pulling Student out of school without authorization.

42. Student contends that Student's mother again requested emergency action in July 2013 due to Student's conduct at home. That was prior to Student's elopement from Oak Grove, and Student's mother could have requested that Student be placed back in Oak Grove. When she eventually did, Student was transported back to Oak Grove.

43. When it was clear that the Oak Grove placement was no longer appropriate because Student had eloped from Oak Grove in August 2013, the District scheduled an IEP meeting for September 6, 2013. Mr. Peters cancelled that meeting the day before it was to be held. The High School District swiftly noticed another meeting for September 23, 2013, and the meeting was held on that date. At that time, the High School District made an offer for a locked RTC placement.

44. Rather than show a denial of FAPE, the history of Student's ninth grade year shows a concerned, dedicated school district that went through Herculean efforts in an attempt to address Student's needs. Student failed to meet his burden to show a procedural violation based on failure to timely conduct IEP meetings. There was no denial of FAPE.

ISSUE 7: DID THE HIGH SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO ASSESS STUDENT APPROPRIATELY IN THE AREAS OF PSYCHOLOGY, BEHAVIOR AND COUNSELING?

45. As discussed in Legal Conclusions 9 – 16 above, the Elementary District conducted an appropriate psychoeducational assessment during Student's eighth grade year. When Mr. Peters requested further assessment during the March 2012 IEP, the

Elementary District offered an educationally related mental health services assessment, but neither parent agreed to that assessment, so it was never conducted. Student's school attendance improved greatly after the March 2012 IEP, so there was no need for the Elementary District to seek further assessment.

46. When Student's truancy reasserted itself again during his ninth grade year, the High School District offered the educationally related mental health services assessment once again, and Student's mother agreed to the assessment. Ms. Moses testified in detail as to the assessment tools chosen for that assessment and opined that it was appropriate. Student brought in no persuasive evidence to contradict that testimony. Dr. Tackett was not a psychologist and any testimony by her criticizing the assessment was not persuasive. The High School District assessed Student appropriately and there was no denial of FAPE.

ISSUE 8: DID THE HIGH SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO PLACE STUDENT IN A LOCKED HOUSING FACILITY AT A RESIDENTIAL TREATMENT CENTER?

47. Student failed to meet his burden to show that the High School District denied Student a FAPE in its various placement offers during Student's ninth grade year. At the start of Student's ninth grade year, the High School District had every reason to believe that Pathways was an appropriate program that could meet Student's needs. Pathways was designed for pupils with emotional issues such as Student. It had a strong counseling component and small sized classes that enabled the staff to give pupils plenty of attention, both academically and social/emotionally.

48. Pathways had built-in flexibility to allow pupils to leave class to go to another location if they needed to cool down. Dr. Tackett was highly critical of this part of the Pathways program, because she felt it was not appropriate to allow a pupil with a history of truancy to leave class when he wanted. However, the district witnesses were

persuasive that the flexibility provided a chance for pupils to deal with their emotions and then get back to work. It was not the same as truancy or elopement. Student's problem behavior involved getting to school. If the ability to step out of class when he was anxious would help lessen Student's truancy, it would benefit him. Throughout the times at issue in this case, when Student was at school he generally did well and made progress.

49. Student's written closing argument contends that Dr. Paltin said Student should be placed at Island View. Dr. Paltin never testified to that, even when discussing his conversations with Student's mother. He never criticized Pathways or any of the High School District placements. When Dr. Stewart attempted to talk to him about Student in October or November 2012, his office told her that he was no longer treating Student.

50. At the time of the IEP in March 2012 and at the start of the 2012-2013 school year, the offer of Pathways was reasonably calculated to provide Student with educational benefit. As Dr. Stewart testified, Pathways would have met Student's needs if Student had given it a chance.

51. Once it became clear that Student would not attend Pathways, the High School District acted appropriately by scheduling IEP meetings and proposing an educationally related mental health services assessment. Based on the results of that assessment, the least restrictive environment in which Student's needs could be met was Oak Grove. There had been no history of Student eloping from school at that point, and Oak Grove could provide the therapeutic milieu that Student required. There was no persuasive evidence that Student required a locked, out-of-state RTC at that point.

52. As the High School District witnesses testified, Oak Grove was working for Student when he was there. He gained progress academically and socially. It could have continued to work for him, but his parents undermined the program by constantly pulling him out of school. The message they gave him through their actions ultimately

led to his elopement from that facility. He knew his parents would support him if he walked away from Oak Grove, and his expectation proved correct.

53. Once Student became an elopement risk, it was appropriate for the High School District to recommend Provo Canyon, a locked RTC. That was the least restrictive environment appropriate for Student at the time. A lesser restrictive environment, such as Island View would not have been appropriate for Student because it was not a fully-locked campus. Island View was really no different than Oak Grove – it had a secured dorm area, just as Oak Grove did. At Island View the dorms were locked and at Oak Grove they were secured by the presence of staff, but the result was the same. When Student eloped from both facilities, he did not elope from the dorms.

54. Student cannot have it both ways – if Island View was the least restrictive environment appropriate for Student as of March 2013, then so was Oak Grove. Both had secured dorm areas, supervision by staff, and no high perimeter fence. If Oak Grove was no longer appropriate as of September 23, 2013, (after Student had eloped) then neither was Island View. At that point, Student needed the higher level of security provided by Provo Canyon.¹⁵

55. Student failed to meet his burden to show that the High School District's various IEP offers denied him a FAPE. At each point in time, the High School District acted appropriately based on the information available to the team. There was no denial of FAPE.

¹⁵ Indeed, Student's objection to Provo Canyon at the September 23, 2013 IEP meeting is somewhat baffling. Student had been clamoring for a locked, out-of-state RTC placement for months, but when the High School District finally offered it, Student refused.

ISSUES 9: DID THE HIGH SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE: 1) BEHAVIOR SERVICES TO STUDENT; 2) PARENT TRAINING; 3) FBA; 4) PSYCHOLOGY/COUNSELING SESSIONS; 5) BEHAVIOR HEALTH COUNSELING AND PSYCHOLOGIST SERVICES TO STUDENT'S PARENT?

56. The High School District witnesses were persuasive in their testimony that the related services offered in the various IEP's during the Student's ninth grade year were sufficient to meet his needs. At the start of Student's ninth grade year, Pathways had counseling, and behavioral/emotional support embedded in the program. The IEP also continued the individual counseling and parent counseling/training from the March 2012 IEP. Dr. Stewart provided parent counseling/training to Student's mother and Student during Student's ninth grade year, when they chose to attend the counseling sessions.

57. Student argues that, because Student was not at school to receive the counseling, the counseling was not adequate. However, that argument is not well taken. While Student's truancy made it necessary for the IEP team to take further action, it did not make the related services themselves inappropriate.

58. When Student began at Oak Grove, he continued to receive appropriate related services. Oak Grove was a therapeutic milieu with plenty of counseling and behavior support for Student.

59. Provo Canyon offered even more intensity of service. Student contends that the High School District should have conducted another FBA, but Student offered no persuasive expert testimony to show that a new FBA was needed.

60. The therapeutic placements in Pathways, Oak Grove and Provo Canyon, along with the related services offered in each IEP were reasonably calculated to address Student's emotional, academic, and behavioral needs and to enable him to benefit from special education. There was no denial of FAPE.

ISSUE 10: DID THE HIGH SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO CONSIDER DR. ROSS' AND DR. PALTIN'S RECOMMENDATIONS THAT STUDENT BE PLACED IN A LOCKED RESIDENTIAL TREATMENT CENTER?

61. The testimony of the High School District witnesses was persuasive that they properly considered all the evidence presented to them regarding Student's needs, including information from Dr. Paltin and Dr. Ross.

62. There was no evidence that Dr. Paltin ever told Student's Elementary District IEP team that Student required an RTC placement. He testified that he mentioned the possibility of an RTC to Student's mother, but his written report made no mention of an RTC. When Student was in high school, Dr. Stewart tried to speak to Dr. Paltin but he did not return her calls.

63. After Student's mother signed a release, Ms. Moses spoke with Dr. Ross about his prescription note to obtain more information from him. The IEP team considered both his written note and the information Ms. Moses received in making its IEP offer.

64. The evidence showed that the High School District made a sincere effort to obtain and consider all relevant information from both Dr. Paltin and Dr. Ross. Student presented no evidence to the contrary. There was no denial of FAPE.

ISSUE 11: DID THE HIGH SCHOOL DISTRICT DENY STUDENT A FAPE AT THE FEBRUARY 20, 2013 IEP MEETING BY DEVELOPING AN IEP WITHOUT PARENTAL PARTICIPATION AND THEN OFFERING IT TO STUDENT'S PARENT FOR RATIFICATION WITH A "TAKE IT OR LEAVE IT" POSITION?

65. Parents are an important part of the IEP process. The IDEA contemplates that decisions will be made by the IEP team during the IEP meeting. It is improper for the district to prepare an IEP without parental input, with a preexisting, predetermined

program and a “take it or leave it” position. (*W.G. v. Board of Trustees of Target Range School District, supra*, 960 F.2d at p. 1484.)

66. Student presented insufficient evidence to show that the High School District developed the IEP without parental participation at the February 20, 2013 IEP. To the contrary, Student’s mother and her advocate participated at every step of the IEP process at all times at issue in this case. There was no final offer of FAPE made at the February 20, 2013 IEP meeting. Instead, the IEP team agreed to come back to discuss RTC’s after the RTC’s were contacted.

67. While Student’s mother was apparently disappointed that the IEP team did not place Student in Island View at the February 20, 2013 IEP meeting, that does not mean she did not participate in the meeting or that the High School District offered her Oak Grove as a “take-it-or-leave-it” proposition. Indeed, the evidence shows that at least two different RTC options were discussed at the meeting. Student’s mother even testified that different options were discussed.

68. Student relies upon the statement made by Ms. Moses at the January 9, 2013 IEP meeting about Student needing an out-of-state RTC. Student insinuates there was something improper when the High School District subsequently offered an in-state RTC. Student claims Ms. Moses had a conflict of interest.¹⁶ If anything, Ms. Moses’ statement supports the High School District’s position. It was clear that the district staff went to those IEP meetings with an open mind, willing to consider the various possibilities, including a locked, out-of-state placement. Even if Ms. Moses later changed her mind based on new information (such as the educationally related mental health

¹⁶ In the written closing argument, Student claims that Ms. Moses’ “performance review and employment salary would be directly influenced by the amount of funds she saved the district....” There was absolutely no evidence to support this claim.

services assessment or the discussion during the March IEP meetings), there was nothing improper in her actions.

69. Just because the parties disagree about a district's offer does not mean there was predetermination or lack of parental involvement in the IEP process. Parental participation does not mean that a school district must accept every preference of the child's parent. A parent does not have a veto power at an IEP meeting. (*Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115.) Likewise, just because the team does not adopt a placement preferred by the parent, does not mean that the parent did not have an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Education* (D.Hawaii 2006) 483 F.Supp.2d 1042, 1051.) There was no procedural violation and no denial of FAPE.

ISSUE 12: DID THE DISTRICT'S PLACEMENT AND RELATED SERVICES OFFERED IN THE IEP AMENDMENT DATED SEPTEMBER 23, 2013, OFFER A FAPE TO STUDENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

70. The District met its burden to show that the proposed September 23, 2013 amendment to Student's IEP offered Student a FAPE in the least restrictive environment when it offered a placement at Provo Canyon. At that point, the District had tried less restrictive placements – including Pathways and Oak Grove – without success. Student had eloped from Oak Grove and was at risk to elope again. Provo Canyon offered the security Student needed along with the therapeutic milieu to help him with his social/emotional issues. It also offered a sufficient program to help Student make up for the high school class credit he had missed. Student's objection to the lack of girls at Provo Canyon was not well taken – contrary to Student's claims, Student's IEP goals did not involve relating to girls.

71. Ironically, Student's written closing argument relies upon the testimony of Ms. Gengler regarding the appropriateness of Oak Grove to argue that Provo Canyon

was too restrictive. Had Student's parents been cooperative with the Oak Grove program, it would have been appropriate for Student. However, Student's parents did not cooperate and Student became an elopement risk. At that point, the High School District properly proposed a more restrictive setting. Student brought in no evidence to dispute that. Indeed, until the September 23, 2013 IEP meeting, Student had been clamoring for a locked, out-of-state RTC placement.

THE REMEDY

72. The remaining question is the issue of remedy. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (See *Parents of Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) However, because there has been no denial of FAPE in the instant case, there is no need to consider any of Student's requested remedies.

73. As part of its requested remedies, the High School District seeks an order permitting it to implement Student's IEP as amended on September 23, 2013. Ms. Moses testimony was persuasive that there will be no lasting harm to Student's education if he is transferred to Provo Canyon at the present time. While there might be some initial adjustment to the new milieu, Student should be able to adapt to the new setting. Provo Canyon will prevent any chance of elopement by Student and will help him recover the credits he needs for high school graduation. It would be too much of a risk at this point to bring him back to an unlocked facility such as Oak Grove.

74. Of course, Student's parents are always entitled to keep Student in a private placement such as Island View at their own expense. However, if Student's mother wishes to avail Student of his right to a free education at public expense, she will have to permit the High School District to implement its September 23, 2013 IEP amendment, and she must cooperate in that implementation.

ORDER

1. Student's claims for relief are denied.
2. The High School District's IEP as amended on September 23, 2013, offered Student a FAPE in the least restrictive environment. The district may implement that IEP.
3. Should Student's mother wish to have Student receive special education services from the High School District at public expense, she must cooperate with the High School District by signing all necessary releases and complying with any other procedures necessary to place Student at Provo Canyon in Utah.

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, the two school districts prevailed on all issues heard and decided.

RIGHT TO APPEAL

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

DATED: May 2, 2014

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings