

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017100067

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on September 29, 2017, naming San Diego Unified School District, Grossmont Union High School District, and Mountain Empire Unified School District. San Diego Unified filed a response to the complaint. On November 7, 2017, Student was granted leave to file a first amended complaint, adding Dehesa School District as a respondent.¹ The filing of the first amended complaint on November 7, 2017, reset the timelines for decision.

Student alleged that San Diego Unified and Grossmont failed to assess Student and offer him a free appropriate public education, and therefore they are liable for compensatory education. On November 16, 2017, on motion of Grossmont, OAH

¹ Prior to any of the hearings in this matter, Student dismissed Mountain Empire, and OAH dismissed Dehesa.

bifurcated the issues in the complaint so that preliminary issues pertaining to each school district's responsibility would be heard prior to issues relating to the merits of the matter. On December 13, 2017, the entire matter was continued for good cause.

On March 13 and 14, 2018, Administrative Law Judge Elsa H. Jones heard the bifurcated issues pertaining to the school districts' responsibility in San Diego, California, and the matter was continued to June 5, 2018, for hearing on the remaining issues in the case. By Order dated May 9, 2018, the ALJ determined that Grossmont was not responsible for assessing Student and offering a FAPE from June 15, 2017, which was the only issue in the case with respect to Grossmont. Therefore, the ALJ dismissed Grossmont from the action. The ALJ determined that the remainder of the bifurcated matter could proceed against San Diego Unified. The ALJ found that San Diego Unified was responsible for offering Student a FAPE from October 1, 2015, through the 2015-2016 regular school year.

On June 5, 6, and 7, 2018, and July 9, 2018, the ALJ heard the remaining issues in the case as to San Diego Unified, in San Diego, California. Patricia Lewis, Attorney at Law, represented Student. Student's paternal grandmother, who is his Educational Rights Holder, attended all days of hearing.² Student did not attend the hearing.

Patrick D. Frost, Attorney at Law, represented San Diego Unified. Jennifer Parks-Orozco, Program Manager, Special Education, for San Diego Unified, attended all days of hearing.

Sworn testimony and documentary evidence were received at the hearing. The parties requested and were granted a continuance until close of business on July 30, 2018, to file written closing briefs. The parties timely filed their written closing briefs on July 30, and the issue set forth below was submitted.

² For clarity, the Decision will refer to her as Paternal Grandmother.

ISSUE

Did San Diego Unified deny Student a free appropriate public education from October 1, 2015, through the end of the 2015-2016 regular school year, by failing to perform its child find obligation to assess Student for eligibility for special education placement and services?

SUMMARY OF DECISION

Student is a 19 year old young adult who was not found eligible for special education until after he was incarcerated in a juvenile facility in 2017, at the age of 18, for crimes that he committed as a minor. He remained incarcerated in that facility at the time of the due process hearing. The San Diego County Office of Education, which is responsible for educating Student while he is incarcerated, initially found Student eligible for special education under the category of specific learning disability, and subsequently also found him eligible under the category of emotional disturbance. Student contends that, when he is released from custody, he will require placement in a residential treatment center, as well as related services, including specialized academic instruction.

Prior to his incarceration, Student attended several high schools, and this matter involves whether San Diego Unified, where Father resided and Student attended school during the 2015-2016 school year, violated its child find obligations. In the middle of the 2015-2016 school year, San Diego Unified suspected Student had a learning disability, and prepared an Assessment Plan. San Diego Unified made several unsuccessful attempts in early 2016 to obtain Father's consent to the Assessment Plan, but ceased all efforts to obtain Father's signature in early March 2016. San Diego Unified never assessed Student for special education.

This Decision finds that San Diego Unified violated the IDEA and the Education

Code because it failed to document its attempts to obtain Father's signature on the Assessment Plan. Further, the evidence supported a finding that had San Diego Unified assessed Student, it would have found him eligible for special education under the category of specific learning disability. Consequently, this procedural violation deprived Student of a FAPE because it impeded his right to a FAPE, significantly impeded Father's opportunity to participate in the decision making process regarding the provision of a FAPE, and caused a deprivation of educational benefits. Student is entitled to compensatory education, to consist of a block of 100 hours of specialized academic instruction, as specified below. This Decision also finds that Student did not meet his burden of demonstrating that he met the criteria for eligibility for special education as a student with emotional disturbance during the 2015-2016 school year, or that he met his burden of demonstrating that San Diego Unified is responsible for paying for any part of Student's potential placement at a residential treatment center after he is released from custody.

FINDINGS OF FACT

BACKGROUND AND JURISDICTION

1. Student is a 19-year-old young man. He is not conserved. He transferred his educational rights to Paternal Grandmother on his 18th birthday in 2017. During the 2015-2016 school year, which is the school year at issue in this action, Student's father resided within the boundaries of San Diego Unified. Student, who was 16 years old and in 11th grade during that time, resided with Father, or with his Maternal Grandmother, who lived next door to Father and also lived within the boundaries of San Diego Unified. Paternal Grandmother lived nearby Father and Maternal Grandmother.

2. Student's domestic life was unstable. He lived with his mother and her family when he very young. By order of the San Diego County Superior Court, dated

January 6, 2006, when Student was six years old, Father was awarded legal and physical custody of Student. Mother relinquished legal custody because of personal issues, including drug use. Thereafter, Student lived mainly with Paternal Grandmother at her house, and sometimes he and Father both lived with Paternal Grandmother at her house. However, at various times Student also lived with Father at Father's house, or with Maternal Grandmother, or with Mother, until she suffered a stroke. At all relevant times, Paternal Grandmother lived nearby Father's and Maternal Grandmother's residences.

3. In 2011, when Student was 11 years old, Mother had a stroke and became incapacitated. She has been in a coma since then. Student witnessed his mother's stroke and vivid emergency attempts to treat her at the hospital. Student's mother used methamphetamines when he was young. Mother was referred to child protective services several times during Student's childhood, including substantiated referrals for general neglect of Student in 2004, when he was four years old, and 2009, when he was 10 years old. Student may also have been exposed to domestic violence between Mother and stepfather. When Student was a teenager, Father twice pleaded guilty to crimes.

4. Student has been incarcerated in juvenile detention by San Diego County since August 16, 2017, when he was 18 years old. He is currently at the Kearny Mesa Juvenile Detention Facility. His arrest and incarceration stem from his alleged sexual abuse of a younger minor at various times from January 11, 2011 through December 31, 2012, when Student was a minor in middle school. Student received a True Finding on a felony count for this offense. Student attends school while in the detention center, operated by the San Diego County Office of Education. The County Office of Education found Student eligible for special education on November 3, 2017, in the category of specific learning disability. Prior to November 2017, no school district in which Student

attended school, including San Diego Unified, found Student eligible for special education.

STUDENT ASSESSED FOR SPECIAL EDUCATION IN NINTH GRADE

5. In fall 2013, when Student was 14 years old and in ninth grade, he enrolled in Helix Charter High School, affiliated with Grossmont. Paternal Grandmother, with whom Student lived at the time, was concerned about Student's poor school performance, and she requested Helix assess Student. Helix responded by assessing Student for special education in fall 2013. The school psychologist produced a written report of the assessment dated November 19, 2013. The areas of suspected disability were specific learning disability and other health impairment. Student struggled academically despite tutoring. He had difficulty concentrating in school. He was not confident when taking tests and needed help processing questions. Student struggled with retention and writing tasks and needed steps written out so that he could visualize what he needed to do. Helix's multidisciplinary assessment reflected that Student did not meet the special education criteria for other health impairment, or for specific learning disability under the discrepancy model.

6. For the assessment, Student, Paternal Grandmother, and two of Student's teachers at Helix, completed the rating scales of the Behavior Assessment System for Children, 2nd Edition. This instrument is a measure of social-emotional adjustment. The assessment report noted several of the raters' responses "may deserve attention." The report included in that category Student's response of "Sometimes" to the item: "I hear voices in my head that nobody else hears." Paternal Grandmother, the only relative of Student who participated in the assessment, reported no such information to the assessor.

7. On November 19, 2013, Helix convened an individualized education program team meeting, attended by Paternal Grandmother and her husband. The team

did not find Student eligible for special education. Both Paternal Grandmother and her husband testified at hearing that Student had hallucinations since middle school, but neither of them reported this to the IEP team. Student did not file a due process hearing request to challenge the denial of special education eligibility.

STUDENT'S ENROLLMENT IN SAN DIEGO UNIFIED

8. In February 2015, when Student was 15 years old and in 10th grade, Student left Paternal Grandmother's home and began to live with Father. On February 27, 2015, Father enrolled Student in San Diego Unified, and listed his address as Student's home address. On March 3, 2015, Father updated the enrollment form to state that Father's address had not changed, but that Student lived with Maternal Grandmother in San Diego Unified boundaries, and listed Maternal Grandmother's address as Student's home address.

9. On March 2, 2015, Father signed a Health Information Form for San Diego Unified. The form requested Father to indicate whether Student had any known health problems, specifically including a space to list behavior/emotional problems, as well as a space to list "Other Health Information." Father did not list any health problems on the form; he left all of the spaces blank.

10. San Diego Unified enrolled Student on March 3, 2015. He attended Lincoln High School in San Diego Unified from March 3, 2015 to the end of the 2014-2015 school year, Student's 10th grade year. At the end of the school year his grades were: C's in Physical Education and Modern World History, a D in Spanish, and F's in English, Integrated Math, and Biology.

RECEIPT OF THERAPY

11. During the latter part of the 2014-2015 school year, Student tagged a

school bathroom.³ On May 1, 2015, Freddy Moreno, Lincoln's full-time school psychologist, referred Student to the San Diego Unified School District Intensive Outpatient Program. The referral was based on the bathroom tagging incident, as well as Student having conflicts with Father, and Mother's comatose status. The Outpatient Program was a mental health services program of San Diego Unified's Mental Health Resource Center, and it included the Early Periodic Screening Diagnostic Treatment Program. The Outpatient Program was under the auspices of the County of San Diego Mental Health Services Program and Medi-Cal.⁴ The Outpatient Program provided services mostly to general education students, but also to some special education students. To qualify for the program in spring and summer 2015, a student must have had an Axis 1 diagnosis pursuant to the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition,⁵ and be eligible for Medi-Cal services. An Axis 1 diagnosis included a diagnosis of a mood disorder, psychosis, or anxiety disorder.

12. Valeh Inskeep assessed Student after he was referred to the Outpatient Program. Ms. Inskeep was a clinician employed by San Diego Unified in the Mental Health Resource Center and who worked in the Outpatient Program and the Diagnostic

³ No evidence was presented regarding the details of this event or of Student's punishment. There was some evidence that Student was suspended from school and placed on criminal probation due to this incident.

⁴ Medi-Cal is California's Medicaid program.

⁵ The Diagnostic and Statistical Manual is now in its fifth edition, which was published in May 2013. For unknown reasons, several of the professionals whose assessments of Student are described below referred to the 4th edition of the Manual instead of the 5th edition.

Treatment Program. Ms. Inskeep testified at hearing. She received a bachelor's degree in industrial psychology in 2005 from California State University, Hayward, and a master's degree in psychology with an emphasis in marriage and family therapy in 2007 from the same institution. She has been licensed since 2013 as a marriage and family therapist by the California Board of Behavioral Sciences. During the 2015 and 2016 school year, she provided therapy to students in the Outpatient Program. At the time of hearing she was still employed by San Diego Unified, but assigned to Central Assessments, and she no longer served in the Outpatient Program as a clinician. She has performed over 200 special education assessments for mental health related services in her career.

13. After she received the referral, Ms. Inskeep attempted to begin the intake process to determine whether Student qualified for the program. She had difficulty beginning the intake process, because she had difficulty getting in touch with both Father and Student. However, she finally met and interviewed Father on May 29, 2015, after he cancelled an earlier agreed meeting date of May 11. She determined that she could be of service to Student, and opened the case with Medi-Cal on June 26, 2015. She was also finally able to contact Student and met with him on June 26, 2015, for the intake interview.

Behavioral Health Assessment

14. Ms. Inskeep prepared a client plan, and performed a behavioral health assessment, dated June 26, 2015.⁶ The information for the assessment was obtained

⁶ This was the first of several mental health and diagnostic assessments to which Student has been subjected by various professionals since June 2015. Student and/or other family members, including Paternal Grandmother, provided inconsistent background information to the professionals who conducted these assessments. The most material of these inconsistencies are mentioned as part of the summaries of these

from interviews with Student, Father, and Maternal Grandmother, and her review of school attendance records and disciplinary reports. Under the category of Presenting Problems/Needs, Ms. Inskeep found that Student exhibited symptoms consistent with Depressive Disorder Not Otherwise Specified, such as depressed mood, anger, irritability, guilt, and difficulty concentrating. He did not fit the full criteria of Major Depressive Disorder. When he was triggered and experiencing symptoms he used maladaptive coping mechanisms. These caused him hardships at school, home, and with the legal system. He failed many classes due to skipping classes, not turning in assignments, and suspensions. He was facing vandalism charges for the bathroom tagging incident. He reported arguing often with Father, and their relationship was very strained. Since Mother's stroke, Student had lived variously with Father, Maternal Grandparents, and Paternal Grandmother. He visited his Mother almost daily. Student reported he knew he had issues with anger and was motivated to receive help. He did not easily trust people. He lived in a neighborhood with heavy gang involvement, but did not identify as a gang member.

15. In the area of Past Psychiatric History, Student received therapy directly after Mother's stroke, but he ceased therapy because he did not believe it was helpful.

16. Under the heading of Education, Ms. Inskeep checked boxes that areas of concern were academic, behavioral, and social. She only checked the box for "academic" as an area of concern because Student was failing his classes, not because she suspected a need to refer him for a special education evaluation. He also had failed many classes from last semester, skipped classes, and did not turn in assignments. He had negative interactions with other students when irritated or angry. He had some educational strengths, in that he had a history of receiving good grades previously. His

reports that are included in this Decision.

teachers indicated he could do well in classes if he attended and completed assignments. Ms. Inskeep believed Student was motivated to graduate from high school.

17. Student met the medical necessity requirement to receive services through the Outpatient Program, as he had an Axis 1 diagnosis. At hearing, Ms. Inskeep reported that this information was included with information pertaining to Student's education because Medi-Cal required that format. However, only the depression diagnosis, and not the education information, qualified Student under the medical necessity prong for qualification for the Outpatient Program. Ms. Inskeep also confirmed that her clinical diagnosis of Student with Depression was not equivalent to a finding under the Individuals with Disabilities Education Act that Student was eligible for special education as a student with an emotional disturbance. She could make a diagnosis of depression under the Outpatient Program if there were symptoms of depression for two weeks. In contrast, Student would have to show symptoms of depression for a longer period of time to establish eligibility for an emotional disturbance under the IDEA.

18. Under Employment, Student reported he volunteered at a soup kitchen for a school assignment and continued volunteering there even when he no longer needed volunteer hours. She perceived he was motivated to get a job and appeared to have a good work ethic.

19. In the area of Social Concerns, Student reported he argued with Father often, he missed Mother tremendously, and he missed his five half-siblings (by his Mother), who had moved to Puerto Rico. He reported extreme dislike for this stepfather. He questioned his belief in God and faced criminal charges for "tagging" in the school's bathroom.

20. In the area of Family History, Ms. Inskeep reported at the time of the assessment Student lived with his maternal grandmother and grandfather, and two uncles who were also in high school. She noted Father lived with a girlfriend and her two

children in a house behind Student's home. Family reported to Ms. Inskeep Mother's history of methamphetamine use, gang involvement on Mother's side of the family, and maternal uncle's diagnosis of Attention Deficit Hyperactivity Disorder. Father had a history of arrests. She noted Student's family was actively involved in his life, and was supportive of his treatment and needs.

21. In the area of Cultural Information, Ms. Inskeep reported on Student's ethnic and religious background, and repeated details about Student's family life. Student had male figures in this life, but he did not believe he had a "father figure."

22. Student identified as heterosexual. He had no history of self-injury, suicide, violence, significant property destruction, or a history of abuse. He remembered his stepfather being physically abusive toward Mother.

23. Student denied smoking, using tobacco, and alcohol and drug use. He denied compulsive gambling. He had only one immediate risk factor on the high risk assessment, which was current behavior dyscontrol with intense anger. Student explained that when he became really angry he would punch walls sometimes, but his maternal grandmother and Father were actively involved in his life, and they inquired when they noticed injuries on his hands. He did not want to deal with that. Ms. Inskeep listed protective factors Student had that mitigated this risk factor. He had a lot of respect and love for his family, who were supportive and loving. He would like to make them proud. He considered himself an influence on his siblings, and understood his behavior could negatively impact them. He did not want to let Mother down, and he believed she was aware of him and what the family said to her during visits. He had no other immediate high risk factors, such as thought or impulses of committing harm to self or others, command hallucinations or beliefs that others control his thoughts or actions. He was not a victim of bullying, nor was he experiencing extreme social alienation or isolation. No self-injury/suicide/violence management plan was necessary.

There was no current domestic violence.

24. On the mental status portion of the exam, Student was alert, with normal orientation, good hygiene, normal speech, coherent thought processes, cooperative behavior, appropriate affect, average intellect, normal memory, age/appropriate/normal motor functioning, age appropriate/normal judgement, and age appropriate/normal insight. He had no command, auditory, visual, tactile, or olfactory hallucinations, and no delusions. He was respectful and kind and would appear to get teary-eyed when speaking about Mother. Ms. Inskeep did not check any of the boxes that characterized Student's mood.

25. Ms. Inskeep noted that during pregnancy, his mother did not have any medical problems or injuries, take any medication, use any drugs or alcohol, or use tobacco. She reported Student's developmental milestones were all within normal limits.

26. Ms. Inskeep diagnosed Student with Depressive Disorder, Single Episode, Not Otherwise Specified (an Axis 1 diagnosis), and classified his psychosocial and environmental problems as Educational Problems, Primary Support Group, and Interaction with Legal System. He had a Globalized Assessment of Functioning score of 60 out of 100.⁷ Ms. Inskeep based her diagnosis on Student's symptoms of irritability, anger, difficulty concentrating, guilt, and depressed mood. He had many fights outside of school, was not getting along well with Father and Paternal Grandmother, had issues with his stepfather, and guilt regarding Mother's condition. He felt responsible for Mother being in a coma because he felt that she was in the emergency room too long

⁷ A Global Assessment of Functioning score was a diagnostic feature of the Diagnostic and Statistical Manual-4. It was scored on a scale ranging from 0 to 100, with 100 being the highest level of functioning. A score of 100 is rarely obtained by any individual.

waiting for treatment.

27. Ms. Inskeep determined that all of Student's symptoms had lasted longer than two weeks and were noticeably affecting his school, home, and social interactions. She did not believe he fit full criteria for Major Depressive Disorder. He used maladaptive coping mechanisms to deal with symptoms/triggers, such as withdrawing/shutting down, internalizing, fighting, skipping classes, and not completing assignments. Later, in October 2015, Ms. Inskeep changed her diagnosis to Major Depressive Disorder, single episode, to comport with the Diagnostic and Statistical Manual-5. Medi-Cal determined that this diagnosis most closely correlated to the previous diagnosis of Depressive Disorder, Not Otherwise Specified as found in the Diagnostic and Statistical Manual-4. She also included Rule out Post Traumatic Stress Disorder. A "rule out" diagnosis meant that another diagnosis might be feasible, and served as a reminder to monitor that possibility. She considered it because of Mother's condition and Stepfather's abusive treatment of Mother.

28. Ms. Inskeep reported that Student would be offered individual therapy one to four times per month, for 13 sessions. Family therapy would be offered and accounted for within the 13 sessions. A program psychiatrist would be available if Student chose to use psychotropic drugs in this treatment, but his family declined that service. She would utilize the therapeutic modalities of cognitive behavior therapy, solution-focused therapy, motivational interviewing, and behavior modification techniques, as appropriate. Ms. Inskeep would contact Father, Maternal Grandmother, and school staff at least once a month regarding Student's progress.

29. Ms. Inskeep completed the Children's Functional Assessment Rating Scale. The Rating Scale listed a variety of current mental health and functional issues with ratings ranging from 1 (No Problem) to 9 (Extreme Problem) during the past three weeks. The ratings were her subjective assessment of Student's condition, based on all

of the information she had received. Ms. Inskeep's ratings were strategic, based on her knowledge of the information Medi-Cal needed to approve services for Student. Student would not receive services if his ratings were less than 5 and if there were only a few ratings of 5, he would not be given more than 13 counseling sessions. Furthermore, ratings should be over 5 so that improvement could be shown over the course of treatment. Ms. Inskeep rated Student as having problems in the following areas: Depression (7-Severe Problem); Hyperactivity (3-Slight Problem); Cognitive Performance (3-Slight Problem); Traumatic Stress (9-Extreme Problem); Interpersonal Relationships; (5- Moderate); Activities of Daily Living Functioning (1-No Problem); Work/School (7-Severe Problem); Danger to Others (4-Slight to Moderate); Anxiety (7-Severe Problem) Thought Process (1-No Problem); Medical/Physical (1-No Problem); Substance Use (2-Less than Slight); Behavior in Home Setting (5-Moderate); Socio-Legal: 5-Moderate); Danger to Self (5-Moderate); Security-Management Needs: (4-Slight to Moderate).

30. Ms. Inskeep's rating of 9 in the area of Traumatic Stress was based on the situation when Mother went into the emergency room with headaches and then went into a coma. She rated Student a 7 in the area of Anxiety, based upon his guilt about Mother going into a coma. She rated his Substance Use as less than slight, because he was on probation. Therefore, even though she knew he used marijuana and drank alcohol in the past, he was abstinent when she rated him.

31. Ms. Inskeep developed a client plan, pursuant to Medi-Cal requirements. Among other things, it described Student's strengths as his motivation to change and to take responsibility for his actions. He wanted to improve his mood, control his anger, and improve his grades and interpersonal relationships. An objective of his treatment was that Student would identify and use appropriate/positive coping skills to replace his current maladaptive coping mechanisms. He would learn two coping skills each month and use them on 1 out of 5 occasions when triggered. He was aware that improving his

coping skills would help to reduce his depressive symptoms.

32. Ms. Inskeep began to provide counseling services to Student on September 18, 2015, and usually met with Student in her office at Lincoln. However, since he had poor attendance at school, she occasionally had to meet with him off-campus to provide counseling sessions. Student was eligible to receive 13 therapy sessions, once per week or once every two weeks, but sessions could also be once a month if he had attendance issues. If additional sessions were needed, Ms. Inskeep could request additional sessions from Medi-Cal.

33. Ms. Inskeep offered wraparound services to Student. These services consisted of professionals coming to Student's home, providing family therapy, and helping Student in the community. His family declined. She offered family therapy to Student. His family declined.

34. During the time Ms. Inskeep provided services to Student, she did not have a reasonable suspicion that Student had special education needs that required mental health services. Part of her ongoing process, when she provided services to students, was to consider whether they should be assessed for special education, and if so, she would refer them for an assessment. She continuously considered whether Student's symptoms of depression caused his school difficulties, and she did not believe they did. In her opinion, his school difficulties were due to his failure to consistently attend school, his lack of motivation, and his failure to receive necessary support from home.

35. Ms. Inskeep testified to her opinion that Student did not require placement at a residential treatment center while she was treating him. A residential treatment center is a highly restrictive placement that provides an intensive round-the-clock therapeutic environment for the students placed there. Ms. Inskeep's work experience included working for three years in a residential treatment center.

Additionally, as part of her employment with San Diego Unified, she had worked in the district's day treatment program. Part of her duties included deciding whether to transfer a student to a residential treatment center from a day treatment program, or vice-versa. In her current position with San Diego Unified as a Central Assessor, Ms. Inskeep has the authority to recommend placement in residential treatment center. She has been a member of IEP teams which recommended residential treatment center placement for students.

36. Ms. Inskeep noted that Student's Global Assessment of Functioning score was 60. Students who were candidates for residential treatment center placement had Global Assessment of Functioning scores in the range of 0 to 25. In her opinion, Student did not present in any way as a child who needed a residential treatment center placement. Ms. Inskeep stated that all lesser treatment options should be exhausted before placing a child in a residential treatment center, starting with counseling sessions, and then, if those were not successful, to try day treatment center services and then, if those were not successful, to consider placement in a residential treatment center. She believed that this process was part of the least restrictive environment requirement. Indeed, she believed that when she was treating Student in 2015-2016, Student did not present as a child who needed a day treatment center. She had never seen the situation in which a student went from therapy and special education instruction directly into a residential treatment center. Further, a residential treatment center was not appropriate for a student who just needed a place to live.

37. Student completed 12 of the 13 counseling sessions to which he was entitled in the program during the 2015-2016 school year, all with Ms. Inskeep. Student left Lincoln before Ms. Inskeep could provide the 13th session. Ms. Inskeep wrote a progress report for each session. At each session, she noted that Student was alert and

oriented times four.⁸ to person, place, time, and situation. He never reported any suicidal ideation; homicidal ideation; self-injurious behaviors, delusions, or hallucinations, and she believed she recorded this information in every progress note.⁹ No family member ever reported to her that Student manifested such symptoms, either. She inquired about these matters at every session with Student. He was never reacting to internal stimuli when he was in session with her. If he had been, she would have noticed it and asked him about it.

38. Student had very poor school attendance. He went to school primarily to see his girlfriend, because his family limited his ability to leave the house. When at school, he would often skip classes or be tardy to classes. Ms. Inskeep's progress notes reflected that his school attendance improved from time to time. However, she considered his school attendance to have been a major factor negatively affecting his academic progress. He made some progress in therapy, as he reported fewer negative interactions with peers at school over time, and he sometimes used some positive coping skills, such as removing himself from a situation, evaluating outcomes, and taking breaks. He exhibited accountability for his behaviors and motivation for change, and he willingly and actively participated in the sessions.

39. As part of her counseling services, Ms. Inskeep also consulted with Maternal Grandmother and Student's history teacher about his behaviors and progress.

⁸ Oriented times four means the individual is oriented to person, place, time, and situation.

⁹ Ms. Inskeep did not actually record this specific information in two progress notes. She recorded in each progress note for every session that he was alert and oriented.

Student's history teacher was interested in Student's progress and in helping him, but reported that Student had difficulty following through and turning in assignments, participating in class, and attendance. Student's history teacher was willing to work with him after school and accept late assignments. Nothing the teacher said to her led her to suspect Student needed a special education assessment.

SAN DIEGO UNIFIED'S DECISION TO ASSESS STUDENT

40. Neither Father nor Maternal Grandmother asked San Diego Unified to assess Student for special education. In December 2015, Ms. Inskeep learned that Student was receiving all F's. She knew that he did not often attend school, because at times she was unable to see him at school and had to provide counseling services at his home. On December 10, 2015, she spoke to Student, asked him if he was having difficulty understanding information, and asked if he thought he might have a learning disability. Student mentioned that he had been assessed at Helix. Ms. Inskeep suspected that Student might have a learning disability, and she discussed her concerns with Father and Maternal Grandmother. Father also recalled that Student was previously assessed for special education. Ms. Inskeep also consulted with Mr. Moreno, Lincoln's school psychologist, and they reviewed Student's cumulative file. The file included an assessment plan from Helix, but no assessment report. Student's cumulative file also reflected that Student's attendance at school was always problematic, but he had a history of receiving passing grades.

41. On December 14, 2015, Ms. Inskeep obtained Student's and Father's signatures on an Authorization for Release of Information from Grossmont and Helix, so she could request the assessment report. She went to Student's house to obtain the signatures, and sent the Authorization to Helix on January 7, 2016, when she returned from winter break. Sometime later in January she went to Helix personally to pick up the assessment report.

42. Ms. Inskeep noted that the assessment report reflected that Student was not eligible for special education. Nothing in the report assisted her in providing services to Student. The results on the Behavior Assessment System for Children included in the assessment report were not in Ms. Inskeep's scope of practice, and that was not a tool she used in providing mental health services. She saw no significance in Student's comment, as reported in the assessment report, that he was hearing voices in his head. She did not view it as a psychotic symptom; young students often become confused as to whether the voice is in their head or just their own voice.

43. After Ms. Inskeep reviewed the Helix report and learned it concluded that Student not eligible for special education, she spoke to Father, Maternal Grandmother, and Mr. Moreno about referring Student for special education. On January 28, 2016, Mr. Moreno prepared a form entitled "Referral for Special Education" for Student. The Referral was partially in the form of a letter to "Parent/Guardian." The Referral explained that there were concerns regarding Student's educational needs, and that an Assessment Plan would be developed to evaluate Student's needs. The Referral explained that an assessment included a records review and administration of tests, as necessary. The Referral advised that Parent would receive a copy of the Assessment Plan, and noted that the reasons for the Referral were "Math" and "Organization/Attention." The Referral listed Ann Marie Klin as Student's case manager, and as a contact if Parent had any questions. Ms. Klin was an educational specialist at Lincoln, who testified at hearing. There was no evidence as to whether the Referral was transmitted to Father.

44. Also on January 28, 2016, Ms. Klin met with Lincoln's vice-principal and Mr. Moreno regarding the Referral, at which time Ms. Klin was directed to prepare the Assessment Plan. Ms. Inskeep might have been included in this meeting also.

45. After the meeting, and on that same day, Ms. Klin prepared the Assessment Plan, which was a computerized form in English which included an explanation of the assessment process, a list of possible areas for assessment, and a space to indicate the title of the assessor for each assessment area. Ms. Klin emailed the form to the school nurse and Dr. Griddine, a school psychologist who had been assigned to Student, who would check the boxes for the various assessments they wished to perform. Ms. Klin herself checked the box for the Academic Achievement assessment and listed her title as the assessor in that area. The completed Assessment Plan specified that Student would be assessed in the areas of academic achievement, health, intellectual development, and social/emotional/behavior, and that a records review would be performed. Except for the areas of academic achievement and health, the Assessment Plan stated that all areas of the assessment would be performed by a school psychologist. Ms. Klin considered the social/emotional/behavior area of the assessment to constitute a mental health assessment. The form stated that this area included how the child felt about himself, how he got along with others, how he controlled his emotions, and how well he transitioned between activities and attended to tasks.

46. The Assessment Plan explained that San Diego Unified was initiating an assessment for special education. The Assessment Plan contained information about the assessment process and the IEP process, some information about parents' rights, stated that the procedural safeguards were enclosed, and specified that no IEP would result from the assessment without parental consent. The Assessment Plan requested both that Parent sign and return the form within 15 days, and that Parent sign and return the form by February 12, 2016 (which was 15 days from the date it was prepared). The Assessment Plan listed Ms. Klin's name and number as a resource if Father had any questions.

SAN DIEGO UNIFIED'S EFFORTS TO OBTAIN FATHER'S SIGNATURE ON THE ASSESSMENT PLAN

47. Within a day or two after she prepared the Assessment Plan, Ms. Klin met with Student. Student told her that Father would be the appropriate person to sign the Assessment Plan, so she gave the Assessment Plan to Student to give to Father for signature, along with a copy of the procedural safeguards, and asked that the signed Assessment Plan be returned to her as soon as Student or Father was able to do so. Thereafter, she followed up with Student about one time per week over the next few weeks, and asked Student about the status of Father's signature on the Assessment Plan. Student gave her various excuses as to why Father had not yet signed it. On February 23, Ms. Klin called Father and left a voicemail message regarding signing the Assessment Plan. On February 25, Father returned her call and left a generic voicemail. On February 25, Ms. Klin called Father and left another voicemail message. Father never returned the call.

48. On March 2, 2016, Ms. Klin learned that Father would be coming to school to meet with Student's counselor. Ms. Klin then emailed Student's counselor to advise that Father needed to sign Student's Assessment Plan. Student's counselor did not respond.

49. Ms. Klin attempted to meet with Father at home to obtain his signature on the Assessment Plan. On March 7, 2016, Ms. Klin called Father and left a voicemail requesting a meeting and advising him that she would be coming to his home. Father did not call back. On March 8, Ms. Klin and Dr. Griddine went to the address listed for Student on the school's computerized records management system. They had difficulty finding the address, and when they arrived at what they thought was the correct house, nobody was home. Since the Assessment Plan was confidential, and since she was not sure she had located the correct house, Ms. Klin did not leave the Assessment Plan at

the door. When she returned to school, she met with Lincoln's vice-principal, and explained that the home visit was unsuccessful. The vice-principal told Ms. Klin to send the Assessment Plan to Father by certified mail. Ms. Klin did so that same day, and personally went to the post office to mail it. She did not mail it return receipt requested, or use any other method by which she could confirm delivery.

50. As set forth above, Father had provided San Diego Unified two addresses for Student when he enrolled Student at Lincoln. The first address was Father's, and was on the enrollment form dated February 27, 2015. The second address was Maternal Grandmother's, and was on the updated enrollment form dated March 3, 2015.¹⁰ At hearing, Ms. Klin was unable to identify to which of these two addresses she and Dr. Griddine went when they made their home visit. Nor could Ms. Klin identify the address to which she mailed the Assessment Plan.

51. On March 8, 2016, the date that Ms. Klin attempted her home visit and mailed the Assessment Plan, Student left Lincoln and transferred to Twain High School. Ms. Klin called Dr. Griddine twice to determine whether Father had signed the Assessment Plan and returned it to school, and learned that Father had not done so. San Diego Unified made no further effort to obtain Father's consent to the Assessment Plan. San Diego Unified offered no documents into evidence to corroborate Ms. Klin's testimony regarding her efforts to have Father sign the Assessment Plan. There was no evidence that Father ever communicated to San Diego Unified that he would not sign the Assessment Plan. San Diego Unified never assessed Student for special education and related services.

¹⁰ The February 27, 2015 enrollment form was referred to as District's Exhibit 6 at hearing, but it appears in the record as Student's Exhibit S-10, pp. 33-34.

52. Student's grades at the time he left Lincoln were F's in American Literature, Biology, Physics, Spanish, Integrated Math, and U.S. History. He received a D in Physical Education.

STUDENT'S ENROLLMENT AT TWAIN HIGH SCHOOL

53. After she obtained the Helix assessment report, and learned that other Lincoln personnel would prepare an Assessment Plan for Father's signature, Ms. Inskeep was not part of the referral or assessment process. However, Ms. Inskeep was concerned when she learned in late January 2016 that Student was worried about making up course credits, and desired to transfer to a charter school to make up those credits. In February 2016, she met with Student and Ms. Stewart (Lincoln's vice-principal), to try to persuade him to stay at Lincoln. That effort was unsuccessful. Ms. Inskeep then attempted to schedule a meeting for March 10, 2016, which would include Mr. Moreno, Oscar Gutierrez (Student's school counselor), Ms. Stewart, Father, Maternal Grandmother, and Student to discuss how to support Student and persuade him to stay at Lincoln.

54. The meeting never occurred. On March 8, 2016, Father and Maternal Grandmother facilitated the transfer of Student to Twain High School.¹¹ Twain was a continuation high school within San Diego Unified, and notable for its focus on assisting San Diego Unified students to make up their course credits so that they could graduate. As part of Student's enrollment at Twain, Father again submitted a Health Information form to San Diego Unified, which he signed on March 7, 2016. The form was identical to the form Father submitted when he enrolled Student at Lincoln. Again, Father did not

¹¹ Ms. Inskeep was told Student had transferred out of Lincoln; she did not learn until hearing that Student transferred to Twain.

list on the form any health problems that Student may have had. He left all of the spaces blank.

55. On March 8, 2016, Ms. Inskeep prepared a Discharge Summary. She stated the reasons Student was admitted into the Outpatient Program. She reported that the plan goals were partially met, and that Student went to a Charter School outside the boundaries of San Diego Unified because that was the information she had. Ms. Inskeep believed Student had made partial progress because he had tried to use his coping skills, even though he still argued with Father. She summarized the services she rendered. Student was offered individual therapy one to four times per month to address symptoms of depression, thus diminishing his level of impairment in this regard. The Program provided collateral services by authorized staff and family to collect data/monitor progress, and provide support toward client plan goals/objectives. The family was offered family therapy and psychopharmacological interventions, but they declined these services. There was no Aftercare Plan, because Student had begun to attend a different school and services could not be provided there under the program. Ms. Inskeep had strongly encouraged Student to follow up with treatment elsewhere. Student declined, but he and his family were aware they could contact Ms. Inskeep in the future to obtain information about resources. In the Discharge Summary Ms. Inskeep noted that substance abuse recommendations were not given because Student denied substance abuse. Student was not taking medications at discharge. Ms. Inskeep reported that Student had a history of physical aggression with his peers, but there was no reported history of abuse. He had a history of traumatic events regarding his Mother's stroke and his observation of her treatment at the hospital. Further, Student's stepfather had a history of being abusive toward Mother and he had a tumultuous relationship with Father.

56. Ms. Inskeep was a credible witness. She was also the only practicing clinical therapist who testified and wrote a report who had solid hands-on experience in providing services to Student at Lincoln during the time period at issue. She was a good documentarian who had developed a relationship with, and demonstrated an interest in Student, and wanted to help him succeed.

57. Student attended Twain from March 8, 2016, through March 26, 2016, when he disenrolled from Twain. Student was acting defiantly and not following Twain's rules. There was some evidence that Student was asked to leave Twain, but no evidence that Student was expelled from Twain, and no evidence as to the circumstances under which Student was asked to leave Twain. There was no evidence that Student continued with the Outpatient Program while at Twain, and there was no evidence that Twain had an Outpatient Program provider.

EVENTS AFTER STUDENT LEFT TWAIN

58. At some point after Student left Twain, he left his Father's and Maternal Grandmother's homes and endured a bout of homelessness. He went to McAlister, a substance abuse rehabilitation program for three weeks in or about May or June 2016. He left without finishing the program. Student occasionally reported auditory and visual hallucinations to Maternal Grandmother from approximately late March 2016 and into May 2016. There was no evidence that anybody reported these hallucinations to anyone at San Diego Unified School District.

59. On June 21, 2016, Student had a panic attack and attempted to jump out of Maternal Grandmother's moving car. Maternal Grandmother drove him to Rady Children's Hospital's emergency room, where he expressed suicidal ideation.

60. There was no evidence that Father lived in any district but San Diego Unified during the remainder of the 2015-2016 school year, which ended on June 22, 2016. There was also no evidence that Student, Father, or any other family member of

Student reported to anyone at San Diego Unified at any time that Student was having hallucinations, abusing drugs or alcohol, exhibiting extreme and threatening behaviors, or having suicidal ideations.

AURORA BEHAVIORAL HEALTH CARE FACILITY MEDICAL REPORTS

61. Student was admitted from Rady to the Aurora Behavioral Health Care facility, an inpatient mental health facility in San Diego. Dr. Patel, an attending physician at Aurora, performed an initial history and physical examination. His diagnoses upon admission were: Major Depressive Disorder, recurrent, severe; Marijuana and Methamphetamine Use Disorder, severe; Methamphetamine-Induced Psychosis; Grief, and Weight Loss.

62. On June 22, 2016, while Student was at Aurora, Anil Patel, M.D., performed a psychiatric evaluation. Dr. Patel did not testify at hearing. Student reported that he had significant depression for a long time, and had suicidal thoughts for some time as well. Dr. Patel reported Student's history of depression was complicated by his use of methamphetamines, and Student stated he became paranoid when he was using or coming off of them. Student reported he had occasional visual hallucinations, again only when he was either on the amphetamines or coming off the amphetamines. Student told Dr. Patel he used amphetamines for about three years, with the longest sober period of about three weeks when he was in rehabilitation in McAlister. He told Dr. Patel he also used marijuana since the age of 13, and, most recently, on a daily basis except during the three weeks when he was at McAlister. He relapsed on his birthday with respect to amphetamines. Student currently reported significant depressive symptoms and self-harm thoughts. He stated he was not feeling safe. Dr. Patel concluded Student had some significant psychosocial stressors. Mother was in a coma. Student denied any manic symptoms or symptoms of psychosis, and Dr. Patel reported Student had no history of manic symptoms. Dr. Patel noted Student had a history of significant

depression, but no outpatient treatment. (There was no evidence that Student reported the counseling he had received at Lincoln.) Dr. Patel reported Student had never been prescribed any medications in the past, and he was not taking any medications.

63. Student advised Dr. Patel about his home life. Student lived with his grandparents, uncle and cousin. Dr. Patel reported Student did not know anything about his biological father. Dr. Patel noted Student was in 11th grade, but had not attended school recently.

64. Dr. Patel observed Student's past medical/surgical history was unremarkable, and a review of his systems was negative.

65. Dr. Patel reported Student was appropriately dressed and groomed, and was calm and cooperative. He was mildly depressed, with a blunt affect. He was clear and coherent. He had paranoia in the past regarding his family talking about him. He was not overly delusional at the time of the examination and did not have hallucinations. He was alert and oriented to time, place, date, and hospital. Recent and remote memory was well preserved. Judgment and insight were fair. He wanted to get sober and receive help for his depression. He denied any homicidal ideation intent, or plan.

66. Dr. Patel's admitting diagnosis, based on the Diagnosis and Statistical Manual-5, were: (1) Major Depression, recurrent, severe; (2) Marijuana and Methamphetamine Use Disorders, severe; (3) Methamphetamine-Induced Psychosis; (4) Psychosocial Stressors, moderate to severe; (5) Impairment in Functioning, severe.

67. Dr. Patel developed an initial treatment plan. Student was to participate in the mood disorder chemical dependency program. Once Student was stable, Dr. Patel suggested that residential rehabilitation might be an appropriate step-down for Student, if available.

68. On July 13, 2016, Dr. Patel wrote a Discharge Summary. Student's Discharge Diagnoses, based on the Diagnosis and Statistical Manual-5, were: Bipolar Disorder Type 1, Not Otherwise Specified; (2) Amphetamine, Marijuana Use Disorder; (3) Psychosocial Stressors, severe to extreme; Impairment in Functioning , severe.

69. The discharge report contained much of the same information as Dr. Patel's Psychiatric Evaluation of June 22, 2016. Dr. Patel also set forth Student's laboratory data, obtained during Student's stay at Aurora. The lab work included a drug screen that was positive for benzos, methamphetamine, methadone, and ecstasy.

70. Student settled down after the first few days of treatment at Aurora. He had significant psychosis, possibly related to the use of drugs. Maternal Grandmother suggested that Student had significant depression, mood swings, and impulsive reckless behavior that preceded the use of drugs. The Discharge Summary did not include any mention by Maternal Grandmother that Student had hallucinations. Student admitted to symptoms of depression, as well as anger, moodiness, and agitation. Dr. Patel determined that Student was coping with very significant psychosocial stressors, including Mother's coma and he had very limited contact with Father. Student reported Father did not have any interest in being part of his treatment during Student's stay at Aurora. Maternal Grandmother was supportive, but was reluctant to have him return to her home.

71. While at Aurora, Dr. Patel noted that Student was placed on Abilify, to help stabilize his mood. He maintained safe appropriate behavior. He was less depressed, and he did not have suicidal or homicidal ideation, intent. Plans were being developed to place him in an appropriate residential program given that he had no other appropriate place to go.

72. Dr. Patel's report described Student's mood as euthymic. His affect was full range, not flat. His speech was clear and coherent. He was motivated to stay sober. At

the time of discharge, he was taking Abilify, 10 mg. daily, and melatonin 6 mg. at bedtime.

EVENTS AFTER STUDENT'S DISCHARGE FROM AURORA

73. After Student was discharged from Aurora, he entered a rehabilitation program and was there for three weeks. He went to another program and was homeless for a time. Paternal Grandmother enrolled Student in San Diego Virtual School during the latter part of the fall semester of the 2016-2017 school year. Student did not move back to Paternal Grandmother's home until January 30, 2017. He received therapy from Family Health Centers of San Diego for a few months after moving in with Paternal Grandmother. Paternal Grandmother and her husband noticed that he seemed to have memory difficulties while he lived with them.

74. On May 23, 2017, Student was charged with the crime described above. In approximately mid-July, Student enrolled in Helping Hand, a sex offender treatment program. Student resided with Paternal Grandmother until July 29, 2017, when he moved back to Father's residence. Towards the end of his stay with Paternal Grandmother, his hallucinations increased, he became defiant and angry, and he began to have difficulty with memory, planning, and communication. Paternal Grandmother became fearful of Student, and thought he had violent tendencies. Student threatened to burn down her home. Student did not physically attack Paternal Grandmother or burn down her home.

PSYCHOLOGICAL EVALUATION, JUNE 2017

75. On June 22, 2017, by order of the Juvenile Court following Student's arrest, Student was evaluated by E. Warren O'Meara, Ph.D., a clinical psychologist. Dr. O'Meara wrote a report of his findings dated June 26, 2017. Dr. O'Meara did not testify at hearing.

76. Dr. O'Meara performed a records review, clinical interviews of Student and Paternal Grandmother, and a mental status examination. The instruments he used were the Kaufman Brief Intelligence Test-2, The Wide Range Achievement Test-4 (Word Reading and Sentence Comprehension Subtests; the Adolescent Psychopathology Scale-Short Form, the Juvenile Sex Offender Assessment Protocol—II, and the Juvenile Sexual Offense Recidivism Risk Assessment Tool—II.

77. Dr. O'Meara reported on his interview with Paternal Grandmother. Paternal Grandmother reported that Student was developmentally delayed, but was not a Regional Center client and not a special education student. Student had been diagnosed with bipolar disorder and had started treatment in a sex-offender program. He was prescribed lamotrigine, a psychiatric medication, for his mood disorder. Paternal Grandmother believed Student's short-term memory was very poor. Paternal Grandmother reported Student had lived almost his entire life with her, and stated Student's mother had been addicted to methamphetamine during her pregnancy with him.

78. Paternal Grandmother's belief that Student was developmentally delayed was never conveyed to San Diego Unified. Paternal Grandmother's report that Mother had been addicted to methamphetamines during her pregnancy was contradicted by the family's report to Ms. Inskip at San Diego Unified that Mother did not take any medication when pregnant with Student. Significantly, Dr. O'Meara's report did not reflect that Paternal Grandmother mentioned that Student suffered from hallucinations, or that Mother drank alcohol when pregnant with Student. She reported this information later, to others, as is set forth below.

79. Dr. O'Meara interviewed Student, who described the crime and denied previous criminal offenses. Student reported he began using alcohol when he was 15 years old, and had used it every other weekend, but had not used it for over a year.

Student also reported he began using cannabis at age 15. Student used it occasionally and last used it a few months before the interview.

80. He was attending 12th grade at a virtual high school. He reported he had never been suspended or expelled from school. His health was good. He had been psychiatrically hospitalized at Aurora Hospital for suicidal ideation after Student's criminal activity became known.¹² Student discussed his family life, and said he had never witnessed domestic violence, but Paternal Grandmother reported to Dr. O'Meara that he was exposed to violence while growing up. Student reported his sexual history.

81. Dr. O'Meara reported on his observations of Student's mental status and behavior. Student was oriented to person, place, time, and situation. He was polite and friendly, and made good eye contact. He reported no difficulty with insomnia, anxiety, or depression. He denied current suicidal ideation. His thoughts and communication were linear and coherent. The content of his thoughts was focused on the topic, however, his thoughts were very concrete and he had speech articulation difficulties. His intellectual functioning was estimated to be in the borderline range, based on his fund of knowledge and academic history. Recent and remote memories were mildly deficient. Levels of attention and concentration were poor. He evidenced difficulty with impulse control, as he wandered around the office and was unable to complete a paper-and-pencil task. He exerted fair to poor effort on the tests Dr. O'Meara administered because of poor attention.

82. Dr. O'Meara reported on Student's test results. On the Kaufman, a test of

¹² It is unclear what Dr. O'Meara meant by this. The official initial investigation into Student's criminal activity did not begin until January 13, 2017, after Student's Aurora hospitalization in June 2016. There was no evidence as to when Student's family learned about Student's conduct.

Student cognitive ability, Student's IQ composite score of 67, his Verbal standard score of 72, and his Nonverbal standard score of 70, placed him in the borderline range on cognition. Dr. O'Meara deemed it necessary that Student be referred for a special education evaluation, and referred to the Regional Center, and that he needed an IEP. On the Achievement Test, which measures academic achievement, Student's standard scores of 90 on Word Reading, 56 on Sentence Comprehension, and 69 on Reading Composite reflected that Student recognized words but could not comprehend sentences. Student could not complete the Psychopathology Scale, because he did not understand the questions, either as written or when read to him.

83. On the Sexual Risk Assessment, Student had a low level of inappropriate sexual drive and preoccupation. The impulsive and antisocial behavior scales were somewhat elevated for caregiver consistency, pervasive anger, and school behavior problems. Student had moderate elevations in the areas of internal motivation for change, understanding risk factors, empathy, and quality of peer relationships. Student's scores on the Recidivism Risk Assessment reflected that he was at a low-moderate risk for recidivism, which illustrated the need for psychiatric intervention and services at a sex offender program and the Regional Center.

84. Dr. O'Meara's diagnoses were based on the Diagnostic Manual-4. They were: Alleged Sexual Abuse of Child; Learning Disorder Not Otherwise Specified, Communication Disorder Not Otherwise Specified, Cannabis Abuse, Rule out Mood Disorder Not Otherwise Specified; Rule out Attention Deficient Disorder; Bipolar Disorder, in history; Borderline Intellectual Functioning; Rule out Mild Mental Retardation; Moderate to Severe Psychosocial Stressors. Student's Global Assessment of Functioning score was 49.

85. Dr. O'Meara concluded that Student's current behavioral and emotional functioning was poor. He had a severe learning disorder and communication difficulties

that had not been identified or addressed. There did not appear to be any risk factors for antisocial attitudes or associations, but he reported that Student's family was dysfunctional, and Student was exposed to domestic violence. There was no evidence or history of aggressive/assaultive behaviors. Dr. O'Meara recommended continued psychiatric consultation for mediations, continuation in a sex-offender treatment program, referral to the Regional Center, and a psychoeducational evaluation for speech and language and learning disabilities.

MENTAL COMPETENCY EVALUATION, JULY 31, 2017

86. On July 31, 2017, Student underwent a mental competency evaluation by Robert Kelin, Psy.D., to determine whether he was mentally competent to stand trial in Juvenile Court. Dr. Kelin, who did not testify at hearing, wrote a report of his assessment, which he signed on August 3, 2017. His assessment consisted of a review of some of the court and police records regarding the alleged criminal offense, an interview with Student and Paternal Grandmother, and the administration of the Raven's Progressive Matrices, the Wide Range Achievement Test-4 (reading and arithmetic subtests only), and the Juvenile Adjudicative Competency Interview.

87. Paternal Grandmother reported that Student's development was fine, but he was very quiet. This report contradicts her report to Dr. O'Meara that Student was developmentally delayed. Student denied having any medical problems, but his Paternal Grandmother stated Student had been diagnosed with "schizophrenia-bipolar." She reported that Student had been diagnosed as schizophrenic at the Family Health Center, because he had been hearing voices.

88. Dr. Kelin briefly summarized Student's family life. Student denied that he was abused or molested. Dr. Kelin then summarized Student's mental health history. Student was attending therapy at Helping Hand once a week since the middle of July. Prior to that, he went to the Family Health Center for a few months. Student was

prescribed Abilify, but was not consistently taking it. Student denied ever being on psychotropic medication, but Paternal Grandmother reported he had previously been on psychotropic medication for a bipolar disorder, and it was not helpful. He was hospitalized at Aurora Hospital in 2016 after his suicide attempt when he attempted to throw himself out of Maternal Grandmother's car. He had also been in the McAlister residential program for a month in 2016, but he ran away. Paternal Grandmother stated Student had been diagnosed by a therapist at the Family Health Center as being schizophrenic because he was hearing voices. Student stated that he used to hear voices that told him to "kill yourself," but he had not heard voices in a month. Student denied having problems with anger and depression, and denied that he never hurt himself or had current suicidal ideation. He had suicidal ideation in the past, and was prescribed medication, but he stopped taking the medication because it was causing hallucinations. Dr. Kelin noted this contradicted Student's previous denial that he was ever on psychotropic medication.

89. Student had a history of using marijuana and methamphetamines. He reported that he last used marijuana in May or June 2017, and that he last used methamphetamines in January or February 2017.

90. Student was not in special education. Paternal Grandmother believed Student had learning disabilities in writing, and that he had difficulty remembering things. Sometimes he would learn something, but could not remember it the next day. Student was never in a gang. He engaged in tagging. Student reported he had friends, but Paternal Grandmother disagreed.

91. Dr. Kelin recorded his observations of Student. Student cooperated with the evaluation procedures, but he had marginal verbal skills and had difficulty describing situations. He often looked down and had difficulty making consistent eye contact. He seemed uncomfortable and was often fidgeting. He was oriented in all

spheres. He denied having any confused or disoriented thoughts, but he heard voices telling him to kill himself until about a month ago. He denied current suicidal or homicidal ideation.

92. Dr. Kelin considered Student's test results. On the Raven's, which was a non-verbal measure of intellectual functioning, Student scored in the Moderately Mentally Retarded range, with an approximate intelligence quotient in the 40's. Dr. Kelin believed this score did not necessarily accurately reflect Student's intellectual skill, as he had difficult focusing, and his Achievement Test standard score in reading recognition was 85. His Achievement Test arithmetic standard score was 69.

93. Student's responses on the Competency Interview reflected that Student did not understand the court proceedings. He had difficulty learning new information and seemed to struggle to learn new concepts.

94. Dr. Kelin was concerned that Student may be experiencing psychopathology. He had inconsistent thoughts. Dr. Kelin's tentative diagnoses were: Rule out Sexual Abuse of Child; Rule out Psychotic Disorder, Not Otherwise Specified; Cannabis Abuse; Rule out Amphetamine Abuse; Rule out Cognitive Disorder, Not Otherwise Specified; Rule out Mild Mental Retardation; Possible Hallucinations, Confused Thoughts, and Confused Communications; Moving Between Family Members; Legal Problems. Student's Global Assessment of Functioning score was 50.

95. Dr. Kelin could not rule out that Student had a developmental disability. Student was not developmentally immature. Dr. Kelin did not believe that Student could assist in his defense in a rational manner. Student was not competent to stand trial. Student was confused about the role of a prosecutor and what a plea bargain was. He had difficulty describing situations and he was a poor historian. Student was not gravely disabled, and was not a danger to himself or others. However, given Student's suicide attempt and that he had heard voices telling him to commit suicide, Dr. Kelin

recommended vigilance regarding these dangers. Similarly, if Student was guilty of the alleged crime, he needed to be watched.

96. On August 16, 2017, Student was incarcerated. Student has remained in custody pending location of a willing and suitable residence for him. His family will not let Student reside with them. The probation department has no jurisdiction to order Student into a residential treatment facility because he is over the age of 18. Student's probation officer would be amenable to Student being placed at a residential treatment facility at a school district's expense.¹³

PSYCHOEDUCATIONAL ASSESSMENTS OF STUDENT.

97. Student was referred for a special education assessment on August 31, 2017, shortly after his incarceration. A psychoeducational/multidisciplinary assessment was performed by the San Diego County Office of Education in September 2017, but this evaluation was not entered into evidence by either party, nor was there any testimony from any representative of the County Office of Education. Therefore, there can be no in-depth discussion of this assessment. However, as noted below, some of the assessment results were contained in the IEP developed on November 3, 2017.

98. On October 16 and October 23, 2017, Student obtained a private neurobehavioral evaluation from Karen Zappone, Ph.D., a clinical psychologist. Dr. Zappone holds a nursing diploma, a bachelor of science degree, and a master of science

¹³ On July 9, 2018, OAH issued a decision in the related case of *Student v. San Diego County Office of Education*, OAH Case No. 2018030499, in which the ALJ determined that the County Office of Education did not deprive Student of a FAPE by not offering him placement in a residential treatment facility upon his release from detention.

in family health nursing and education. In November 1986 she received her master's and doctorate degrees in clinical psychology from the California School of Professional Psychology in San Diego, California. Since 1998, she has been an assistant clinical professor, volunteer faculty, at the University of California, San Diego, School of Medicine. She has also maintained a private psychotherapy practice since 1987. Her practice includes performing neuropsychological assessments and learning disability assessments. Dr. Zappone does not hold a California teaching credential or special education credential.

99. Dr. Zappone's evaluation consisted of a review of records, an interview of Student and Paternal Grandmother, and a variety of assessment tools. Dr. Zappone believed Student made good effort on the tests and the results of her evaluation were representative of his current level of functioning.

100. Student's affect was constricted. He admitted to feeling sad at times, and to crying. He admitted to having some anxiety and nightmares. He denied suicidal ideation, hallucinations, and delusions at the time of the evaluation. Dr. Zappone's report did not contain any statements by Paternal Grandmother that Student had any hallucination or delusions. It also did not refer to Mother using alcohol when she was pregnant with Student.

101. On the Wechsler Adult Intelligence Scale, 4th Edition, a measure of cognitive ability, Student obtained standard scores of 83 on the Verbal Comprehension Index, 88 on the Perceptual Reasoning Index, 89 on the Working Memory Index, and 76 on the Processing Speed Index, for a full scale index score of 80. Dr. Zappone interpreted these scores to mean that Student processed verbal information and nonverbal information equally well. His Processing Speed Index score showed a significant weakness. Dr. Zappone also reported Student's scores on the subtests that comprised these indices. Within the Verbal Comprehension Index, she concluded that

Student's acquired verbal skills were a significant weakness. He had not learned as much as would be expected from the environment. His abstract verbal skills were in the average to low average range. He scored in the average to low average range on a vocabulary test. His social judgment was average. Student had some relative difficulty generating more than one solution to social dilemmas, and he gave concrete answers on proverbs.

102. On the Perceptual Reasoning Index, Student had significant strength on a test of his ability to find missing essential details, as he scored in the superior range. He scored in the average range on a task of analogic thinking, which she believed was likely to be the best estimate of his innate ability. Student scored in the low average range on a test of visual spatial integration. He had difficulty as items became more complex.

103. On the Working Memory Index, Student's immediate auditory attention score was in the average range. His sustained attention score was in the low average range, and he also scored on the low average range on a test of concentration as measured by orally presented information. His Processing Speed Index score included a low average range score in visual motor speed, and a very low range score in visual symbol search.

104. On the Woodcock-Johnson IV Tests of Achievement Form A, which measures academic achievement, Dr. Zappone noted that Student's overall academic achievement, as measured by his Broad Achievement standard score of 76, was in the low range of others his age. His standard scores were in the average range on the Letter-Word Identification and Spelling subtests. His scores were within the low average range for five clusters (Reading, Written Language, Broad Written Language, Written Expression, and Academic Skills) and two subtest (Writing Samples and Sentence Writing Fluency). Student's scores were within the low range for six clusters (Broad Reading, Mathematics, Broad Mathematics, Math Calculation Skills, Academic

Applications, and Academic Fluency) and four subtests (Applied Problems, Passage Comprehension, Calculation, and Math Facts Fluency.) He scored within the very low range for one cluster (Reading Comprehension) and two subtests (Sentence Reading Fluency and Recall.) Dr. Zappone concluded that Letter-Word Identification was a relative strength, and Sentence Reading Fluency, Reading Recall, and Reading Comprehension were relative weaknesses. In an analysis of variations among Student's Woodcock achievement cluster scores, Student demonstrated a relative strength in Academic Skills.

105. Dr. Zappone administered the Conners' Continuous Performance Test, which measures an individual's attention. Student did not respond consistently. He was unable to sustain attention throughout the test. He had multiple errors. His perceptual sensitivity was impaired. Student's score of 99% meant that there was a 99 percent chance that a clinically significant problem existed, which meant, in turn, that it was likely that he had impaired sustained visual attention.

106. On the Peabody Picture Vocabulary Test-4th Edition, which measures receptive and expressive language skills, Student obtained a standard score of 74 on receptive vocabulary. His general information score was at the 16th percentile. Taking into consideration Student's scores in these areas on the Wechsler, Dr. Zappone concluded that Student had a significant weakness in receptive and expressive language skills.

107. On the Developmental Test of Visual Motor Integration, 6th Edition, which measures visual motor skills, Student had the most difficulty with three-dimensional items. He scored higher on this untimed measure than he did on the timed Wechsler Digit Symbol Coding subtest. Therefore, Dr. Zappone determined that Student did best with extended time on written measures.

108. Student's scores on the California Verbal Learning Test, 2nd Edition, a measure of verbal recall, reflected that he had a slow learning curve. He did not seem to have strategies for recall such as counting, grouping, or categorizing the words.

109. Dr. Zappone administered the Rey-Osterreith Complex Figure Test, which involved copying 18 elements on a piece of paper. Student drew the figure by working around the figure, and he ran out of space on the right side of the page. His copying was average while his recall was below average.

110. Dr. Zappone administered the Stroop, a verbal fluency task that is influenced by frontal lobe functioning. Student was first asked to name colored dots, then words were written in colors and he had to name the colors. Finally colors are written in ink of another color, and Student has to name the color of the ink. Student performed slowly. He was unable to inhibit the automatic response of reading the word rather than saying the color.

111. Student scored in the average range on the Controlled Oral Word Association Test, which measures verbal fluency. He scored in the average range on the Delis Kaplan Test of Executive Functioning. He had a relative weakness on a test of simultaneous processing.

112. Dr. Zappone described Student's responses on a Sentence Completion Test and a Projective Drawings Test. She concluded that his expressive and receptive language skills were impaired. Student's difficulties with attention and concentration interfered with learning. He did not appear to have strategies for recall of verbal information, and he had planning problems when copying a complex figure. Student was likely to get overwhelmed by complex assignments, have problems breaking down tasks, and may avoid difficult tasks. When Student appeared confused by tasks, he did not ask for clarification, but when the assessor offered assistance he accepted it. Student's problems with flexibility in his thinking and his difficulty generalizing from one

situation to another may create problems with respect to test taking. She concluded that he had some anxiety about learning and significant motor slowing.

113. Academically, Student's reading level ranged from the early fourth grade to early fifth grade level. His math level ranged from the fourth grade to middle fifth grade level. His writing skills were in the fifth grade to early eighth grade level.

114. Dr. Zappone's impressions were Anxiety Disorder Not Otherwise Specified, Bipolar Disorder Not Otherwise Specified, Psychoactive Substance Abuse Disorder, Attention Deficit Hyperactivity Disorder Not Otherwise Specified, Rule out Head Injury Not Otherwise Specified, Learning Disorder Not Otherwise Specified, Mixed Expressive and Receptive Language Disorder, Motor Disorder Not Otherwise Specified, Motor-Slowing, and Cognitive Disorder Not Otherwise Specified.

115. Dr. Zappone's testing showed a discrepancy between Student's ability and performance. She believed the test instruments she used were more comprehensive and provided more information than the test instruments administered to Student during Helix's psychoeducational assessment.

116. Dr. Zappone recommended ongoing psychiatric care; referral to a neurologist to rule out any underlying disorder related to motor slowing and learning issues; sobriety and participation in a recovery program, a full speech and language evaluation; an assistive technology evaluation, and special education services, to include individualized math and reading programs, and classroom and testing accommodations.

117. Dr. Zappone testified at hearing. She first met Student on October 16, 2017, in Kearny Mesa and the last time she saw him was on October 23, 2017. She did not make a placement recommendation in her report because she was not considering placement after his detention at that time. Her assessment was only to ascertain his level of functioning while he was in detention. However, she believed he needed a more restrictive placement than the home setting the IEP team recommended in January

2018. He needed a residential treatment center for medication management, so that someone could monitor his behavior, and so that he remained stable enough to attend school and continue his education. She did not believe that he would take his medication on his own. Her long-term goals for residential treatment were to allow him to finish his education, continue to stabilize his behavior, and prepare for employment.

118. Dr. Zappone believed that the various disorders she listed in her report would affect Student's ability to learn. He was anxious in class, he had trouble attending and sitting skill, he had difficulty processing information, and it was hard for him to rapidly perform tasks. She considered her findings to be consistent with the grades he received at Lincoln, and that the disabilities she listed in her report would have been apparent in 2015-2016. In her opinion, Student required special education during the 2015-2016 school year. She also would have recommended psychiatric residential treatment and special education services during the 2015-2016 school year.

119. Dr. Zappone did not believe that Student was displaying the symptoms for a schizophrenia diagnosis when she assessed him. He was having hallucinations, but not delusions. He did not exhibit disorganized speech or disorganized behavior. He did not have the negative symptoms of schizophrenia, such as a lack of interest in things and an inability to initiate.

120. Dr. Zappone never attempted to speak to anyone at San Diego Unified, or to obtain Student's records from San Diego Unified. She was not aware that Student received services from a mental health clinician while at San Diego Unified, and acknowledged that it may have been helpful for her to have spoken with the clinician.

121. Dr. Zappone had no opinion as to Student's ability to make decisions for himself or to care for his personal needs in the areas of grooming and hygiene.

122. Dr. Zappone's opinion, based upon her assessment, that Student likely had a learning disability during the 2015-2016 school year and required special education

was credible. Dr. Zappone was a highly experienced clinical psychologist. Student had made educational progress since he was found eligible for special education as a student with a learning disability while in custody. Student's school attendance issues were ameliorated by being in custody, which likely also contributed to his educational progress, but the evidence of Student's learning disability during the 2017-2018 school year was uncontradicted. Dr. Zappone's opinion that Student would have exhibited the same the learning deficiencies he demonstrated in her assessment in 2015-2016 was also uncontradicted.

123. Dr. Zappone's opinions regarding Student's mental health issues and need for special education and a highly restrictive placement because of them during the 2015-2016 school year were less persuasive than her opinions regarding Student's learning disability, and less persuasive than Ms. Inskeep's opinions. First, Dr. Zappone had no familiarity with Student and his educational environment during the 2015-2016 school year, but Ms. Inskeep did. Second, Dr. Zappone demonstrated little, if any, familiarity with the particular criteria that must be met to find a Student eligible for special education and related services under the category of emotional disturbance, and she did not systematically refer to those elements in her report or her testimony. Additionally, her testimony that Student required a very restrictive placement during the 2015-2016 school year in some type of residential treatment center reflected no familiarity with the legal requirements of the continuum of placement options and the least restrictive environment, but Ms. Inskeep exhibited familiarity with those requirements. Finally, Ms. Zappone did not express in either her own assessment report or at the January 12, 2018, IEP team meeting she attended, as described below, that Student had any need for placement in residential treatment center. Therefore, Dr. Zappone's opinions and recommendations regarding Student's mental health issues were not as persuasive as Ms. Inskeep's.

INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING OF NOVEMBER 3, 2017

124. On November 3, 2017, the San Diego County Office of Education convened an IEP team meeting. The IEP team included an administrator; a school psychologist; Cathy Garcia (an educational specialist from the County Office of Education); Trevor Darling (a general education teacher); a school counselor; Paternal Grandmother; Dr. Kathleen Edwards (Student's educational advocate); Student, counsel for Student, and counsel for the County Office of Education.

125. Among other things, the team discussed the assessment results that Student obtained from the psychoeducational assessment performed by San Diego County Office of Education. The team also had the benefit of, and referred to, the results of Dr. Zappone's neurobehavioral assessment. Dr. Zappone did not attend this meeting.

126. The team discussed Student's present levels of performance in the area of Pre-academic/Academic/Functional Skills. At Kearny Mesa, Student was enrolled in English 12, Integrated Math 1, Earth Science, Government, and Physical Education. Student could complete a daily writing prompt by composing a few sentences on his own and then, with prompts, would add more details. He would work in a small group, take notes on current events, and share his ideas when called on. In math, Student would solve basic addition, subtraction, multiplication, and division. He could use a calculator. He was working on solving literal equations with a single variable (e.g., distance, rate, time). In science he was studying forms of alternative energy.

127. On the Woodcock-Johnson IV Tests of Achievement Form B, administered on behalf of the San Diego County Office of Education in September 2017, Student obtained the following standard scores: 102 in Letter Word Identification; 73 in Applied Problems; 94 in Spelling; 77 in Passage Comprehension; 67 in Calculation, and 98 in Writing Samples. Student's overall cognitive skills ranged from well below average to low average according to the IEP team's discussion of the County Office of Education's

assessment, but the team learned that this score subsumed many cognitive processes that were affected by Student's processing deficits, which led to a lower overall score. Previous school evaluations and Dr. Zappone's scores of cognitive ability were similar, which suggested that Student's cognitive ability was in the low average range and remained stable over time.

128. The IEP team also discussed Student's Woodcock scores on the County Office of Education's assessment in more detail. Student's Fluid Reasoning Cluster scores ranged from low average to average, but subtest scores diverged as Student did not complete the Concept Formation subtest. Both the County Office of Education's and Dr. Zappone's assessments reflected that Student exhibited the ability to solve problems, to understand relationships among designs, and to reason by analogy.

129. On the County Office of Education's assessment, Student demonstrated a narrow mental field, as he scored well below average in working memory and short-term stored memory on the Woodcock. He could hold and manipulate up to three pieces of verbal information reliably. He demonstrated below average phonemic awareness (the ability to identify distinct sounds or sound blends and to manipulate those sounds and blends). Student's limited skills in this area did not affect his basic reading and spelling, which suggested that he could pull words as a whole from long-term retrieval. His general knowledge and crystallized abilities sensitive to long-term storage were in the low average to average range.

130. The IEP team discussed the area of communication development. Student's articulation and use of language were mildly difficult for an unfamiliar listener to understand. He was soft-spoken and mumbled. His written expression was in the low average to average range. He had basic sentence structure, legible handwriting, and he could convey his ideas. The County Office of Education assessment, Dr. Zappone's assessment, and teacher report, reflected Student could write his thoughts, but he did

not usually volunteer to participate or ask for help. He was often reluctant to orally share in class.

131. The County Office of Education assessment reflected that Student's general motor functioning and fine and gross motor skills were in the average range. His standard score of 94 on the Visual Motor Integration test was well within the average range. He enjoyed sports and participated in physical education. He had legible handwriting.

132. In the social-emotional/ behavioral area, the team referred to Dr. Zappone's report. Student had been evaluated for psychiatric conditions on several occasions. Dr. Zappone found that he had good perceptual responding skills and analogic thinking. He had average social judgment but may have difficulty finding one of more solutions to social dilemmas. The team interpreted Dr. Zappone's findings as reflecting Student has deficits in attention, planning, and working within a complex visual field. These deficits affected Student's reading comprehension and fluency. The team listed the diagnoses Dr. Zappone enumerated in her report.

133. Student was under the care of two therapists for pharmacotherapy and counseling, through the behavior health provider that served juvenile hall. He received therapy on a weekly basis and psychiatric interventions.

134. The IEP team considered Student's scores on the Behavior Assessment System for Children, Third Edition, administered by the County Office of Education for its psychoeducational assessment. Teacher informants on the Behavior Assessment were Mr. Darling and Mr. Leon (another of Student's teachers). None of their clinical or adaptive scores were clinically significant and the results were valid. They reported that Student had few externalizing behaviors associated with classroom performance. Student showed self-control, could control aggression, and could follow classroom rules. He had appropriate materials at his desk, made transitions without incident, and

interacted with peers and adults appropriately. Internalizing behaviors, those associated with depression, anxiety, and withdrawal, were within the average range according to Mr. Darling, and within the at-risk range according to Mr. Leon. Mr. Leon perceived behaviors associated with withdrawal and depression. Student did not become over-emotional or threaten suicide, but he sometimes disengaged from others and avoided initiating contact. Both teachers were concerned with Student's social skills. Student did not always answer questions clearly and would go off topic. He preferred to be alone, and sometimes had difficulty joining groups. Mr. Leon rated all of Student's adaptive skills as at risk. He was concerned with Student's ability to socialize, complete his work, and communicate clearly.

135. The team discussed that Student's own ratings were considered largely invalid. The Behavior Assessment was designed for a second-grade reading level, but Students' poor reading comprehension skills affected his performance on his self-report. Even though they were invalid, Student's self-ratings were consistent with his atypical responses on his sentence completion assessment tasks, and with teachers reporting that he did not always understand the question. He could get off topic and not always absorb all the information.

136. In general Student expressed frustration with his current situation. He expected to have graduated by this time and have a job. He was attending class daily, had begun to interact with classmates, and was respectful toward his teachers. He felt his strength was in reading. He wanted to graduate from high school in the next year.

137. In the vocational area, Student needed 60 credits to complete a diploma if he qualified under AB 216, or 98 units if he did not so qualify.¹⁴ The team anticipated he

¹⁴ AB 216 (Ed. Code, § 51225.1) provides an exemption from a school district's local graduation requirements for certain students who transfer between schools any

would receive his diploma in June 2019. Student had very few long- or short-term goals with regard to work or vocation. He was unclear where he would go after incarceration or what opportunities would be available to him. The team developed an individual transition plan, based on a transition assessment performed by the County Office of Education. Student scored highest in the areas of Business Management and Public Service. He expressed interest in joining the Army, firefighting, or obtaining a job with the city. He had prior work experience in landscaping, but was not interested in pursuing a career in that field.

138. The team determined Student had all of the basic daily living, communication, and socialization skills to allow him to complete day-to-day living tasks. Paternal Grandmother advised that Student had a limited knowledge of directions and remembering simple computer passwords. She was concerned about his comprehension and memory. She wanted him to understand expectations. She wants him to work on expressing his feelings. She was concerned with his mental health and visual hallucinations.

139. Student was reported to have received multiple injuries in a bicycle accident in March 2017. He was treated at a hospital and released, but there was no follow-up regarding possible head trauma. He took Abilify to improve attention. Student passed his hearing and vision screenings.

140. The team determined that Student was eligible for special education under the category of specific learning disability, due to auditory processing deficits that impeded his learning. Additionally, Student's learning disability in the area of memory

time after the completion of the second year of high school. The exemption does not apply if the school district finds that the student is reasonably able to complete the district's graduation requirements by the end of the student's fourth year of high school.

deficits and limited cognitive efficiency affected his reading comprehension and math. Student's areas of need were transitioning to post-secondary activities, reading comprehension, written language, integrated math, task completion, behavior, and self-advocacy. The team developed annual goals in each of these areas. Student did not require assistive technology devices or services. Student's behavior impeded his learning, as he tended to "shut down" when presented with work he perceived as too difficult. The team's positive behavior support recommendations included a point system, earned incentives, and positive reinforcement.

141. The IEP team offered placement in a general education setting, on a diploma track, with the following services: (1) 600 minutes per week of group specialized academic instruction in language arts and math; and (2) 600 minutes per year of individual counseling provided by a school therapist. The team did not recommend special educational summer school services, because Student had a continuous school year while in detention. The team agreed that Mr. Crain, the school psychologist, would make a referral for an Educationally Related Mental Health Services assessment, and that Student have a speech and language evaluation. The team agreed that the Mental Health Services assessment would address Student's report that he experienced auditory and visual hallucinations. Concerns regarding Student's pragmatic language skills would be addressed in the speech and language assessment.

142. Paternal Grandmother sent an addendum to the IEP, dated November 14, 2017, and enclosed the signature page of the IEP. She agreed with the IEP, except for the following: (1) Student should be assessed for eligibility with respect to emotional disturbance, especially based upon a fetal alcohol spectrum disorder discussed in an assessment report dated November 3, 2017, and that the November 3, 2017 report be

included in the IEP;¹⁵ (2) The Mental Health Services Assessment should address Student's hallucinations as reported by him and Paternal Grandmother; (3) The reference in the IEP to Student graduating in 2019 should be changed to 2021, based upon the brain injury identified in the November 3, 2017, report regarding fetal alcohol spectrum disorder; and (4) The County Office of Education hold an IEP team meeting to review the new assessments, including the information about brain damage and related emotional issues.

MEDICAL REPORT FROM RADY CHILDREN'S HOSPITAL, NOVEMBER 3, 2017

143. Student was examined at the Rady Children's Hospital Genetics Dysmorphology Clinic by Kenneth Jones, M.D. on November 3, 2017. The examination was requested by Student's criminal defense attorney, who sought an opinion as to whether Student had physical features consistent with prenatal alcohol exposure.

144. Dr. Jones did not testify at hearing. Dr. Jones spent 30 minutes examining Student. Dr. Jones concluded that Student had a number of physical features consistent with prenatal alcohol exposure, and he specified those features in his report. Student did not have enough of the cardinal features for a diagnosis of fetal alcohol syndrome, however, Student was "clearly. . .on the spectrum of fetal alcohol spectrum disorder." Student's physical features, neurobehavioral problems, and the history provided by family members that Mother drank alcohol during her pregnancy with Student, all indicated that Student had alcohol-related neurobehavioral abnormalities. Dr. Jones

¹⁵ This report reflects an examination that occurred on the same date as the IEP meeting, and is discussed below. There was no evidence that the IEP team was aware of the results of this examination or the report at the time of the IEP team meeting.

diagnosed Student with alcohol-related neurobehavioral/developmental disorder.¹⁶

IEP TEAM MEETING OF JANUARY 12, 2018

145. The County Office of Education convened another IEP team meeting on January 12, 2018, to consider the results of the Mental Health Services assessment and the Speech and Language assessment.¹⁷ The IEP team included Paternal Grandmother; her husband; Dr. Edwards (Student's educational advocate); Student's attorney; Richard Enns (Student's probation officer); Dr. Zappone; Mr. Darling; the school psychologist; Irene Dominguez (school therapist); Ms. Garcia; a County Office of Education Administrator, Laura Rogers (mental health services assessor); Christina Everett (speech and language pathologist); and an attorney for the County Office of Education. Student was not present.

146. The team updated various portions of the November 2017 IEP. Student had completed 142 credits. It was anticipated he would receive his diploma on June 6, 2021.

147. The team discussed Student's strengths and interests. Student felt his strength was reading, and the Woodcock assessment reflected he had a strength in letter-word identification and sentence writing. Student wished to graduate from high school in the next year, and was interested in working for the city or firefighting. Paternal Grandmother's concerns were largely the same as those she expressed at the prior IEP team meeting. She wanted things explained to him and assurance that he

¹⁶ Dr. Jones's report does not explain where he obtained the information that Mother used alcohol during her pregnancy with Student. As was stated above, this information was not reported to San Diego Unified during 2015-2016.

¹⁷ Neither assessment report was offered into evidence at hearing.

understood what was expected of him. She wanted him to work on expressing his feelings. She was concerned with Student's mental health: depression, trauma, and visual hallucinations. She reported Student seemed calmer and was feeling better on his current medication.

148. The team updated Student's present levels of performance. Student was asking for help in Integrated Math. He was completing the math work at grade level, helping classmates with math assignments, and volunteering to solve problems on the board. He was completing his language arts assignments and volunteering to share his work aloud. Ms. Dominguez, the school therapist, stated Student had been seeking her out multiple times per week, but was now attending counseling one time per week. He was advocating for himself, talking through the coping steps he took, and had friends.

149. Ms. Rogers, the County Office of Education's mental health services assessor, reviewed her report. Her review reflected that Student had a mental health condition treatable with therapy, and she recommended outpatient services. Student's attorney and advocate believed that Student required a residential treatment placement when he left incarceration. The County Office of Education offered to hold an IEP team meeting upon notice of Student's court disposition and invite whichever school district would be Student's district of residence.

150. The team updated Student's present levels of performance in Communication Development based upon the results of the speech and language assessment. Student's scores ranged from below average in pragmatics and auditory comprehension, to average in semantics, syntax, antonyms, and synonyms. He was soft-spoken and mumbled. Student stated he mumbled when he was uninterested in the subject or just did not feel like talking. He was highly distractible throughout the testing sessions and had a difficult time with attention and focus. He was particularly challenged when required to listen to a passage, which could not be repeated, and then answer

questions about it. His written expression abilities ranged from low average to average. His issues with attention and focus could impact his general knowledge. Recently, Student had begun to participate and ask for help when needed. He was able to write his thoughts on paper.

151. The team updated Student's health status by including a reference to Student's diagnosis of alcohol-related neurobehavioral/developmental disorder, pursuant to the November 2017 report of Dr. Jones.

152. The team changed Student's primary eligibility to emotional disturbance, and listed specific learning disability as a secondary eligibility. Student's mental health disabilities affected his involvement and progress in the general curriculum, because Student exhibited a pervasive sadness and depression impacting his progress in the general education setting. Student also had a learning disability in the area of memory deficits, and limited cognitive efficiency affected his reading comprehension and mathematics performance. The team added semantics and pragmatic language as areas of need for Student, and added goals in those areas. The team offered 600 minutes of specialized academic instruction per week in language arts and math. The team increased Student's counseling services to 900 minutes per year, by a school therapist, at a level of 60 minutes on average in a week. The team also added language and speech services of 2400 minutes a year, at a level of 60 minutes of service on average in a week, 45 minutes of which would be individual and 15 minutes of which would be consultation.

153. Paternal Grandmother submitted an addendum to the IEP, dated February 6, 2018, which enclosed her signed consent to the IEP with the following exceptions: (1) Notes should reflect that placement upon release from custody should be a residential treatment facility, to address emotional disturbance, sexual abuse therapy, activities of daily living needs, medication compliance, and substance abuse therapy; (2) Notes should

reflect Paternal Grandmother and her husband described Student's violent conduct in their home and his threat to burn the house down, and therefore Student would not be able to live in their home; (3) Student needed an adult assessment regarding activities of daily living; (4) Mental Health Services Assessment report should be revised to include information regarding Student's violence, inability to perform basic activities of daily living, and to state he would have no home upon release, "to prevent his homelessness"; (5) Mental health services assessor will provide the test protocols; and (6) Speech and language assessor determined Student was not doing well with attention, focus, and the "inability to access memory, which needs treatment".

INDEPENDENT MENTAL HEALTH SERVICES ASSESSMENT BY KILEY DUNNE LIZAMA

154. In spring 2018, the County Office of Education agreed to fund an independent Mental Health Services assessment. Kiley Dunne Lizama performed the assessment, and wrote an assessment report on May 5, 2018. Ms. Lizama did not testify at hearing. The signature line on the report identified her as a licensed marriage and family therapist, and an Educationally Related Mental Health Services Assessor, who was affiliated with a nonpublic agency. The purpose of her assessment was to evaluate whether placement at a day treatment facility or residential treatment facility was appropriate to meet Student's educational needs.

155. Ms. Lizama interviewed Ms. Garcia, Student's math teacher, Student (who still resided at Kearny Mesa), Paternal Grandmother, Student's school counselor, and probation officer. She observed Student at school at Kearny Mesa for 30 minutes. She reviewed Dr. Zappone's report; Ms. Everett's speech and language evaluation report; the County Office of Education's original Mental Health Services assessment report and its psychoeducational assessment report; Student's IEP's of November 3, 2017 and January 12, 2018; a report of Student's physical exam performed in juvenile hall dated August 22, 2017, a report of a doctor's visit at Rady Children's Hospital dated November 3,

2017; and Student's report card of April 25, 2018.

156. Ms. Lizama noted Student's eligibility for special education services under the primary category of emotional disturbance and the secondary category of specific learning disability. She listed his previous diagnoses based upon previous assessments. Student currently took Abilify daily in the morning to improve concentration.

157. Ms. Lizama reported Student's birth and developmental history. Based upon her interview with Paternal Grandmother, and Dr. Jones's November 2017, report, Ms. Lizama noted that Mother abused methamphetamine throughout his life, and exposed him to alcohol in utero. As found above, until Dr. Jones's examination, no family member had reported that Mother abused alcohol while pregnant with Student. Based upon her interview with Paternal Grandmother, as well as reports she reviewed, Ms. Lizama reported that Student's developmental milestones were delayed, in that he did not walk until he was older than 1 year, and he did not speak until about 18 to 24 months. As also found above, Paternal Grandmother's opinion that Student was developmentally delayed was not revealed until after Student was arrested. Ms. Lizama also noted, based on information Paternal Grandmother imparted, as well as from reports she reviewed, that Student was exposed to domestic violence at Father's home as well as Mother's home. This was the first mention in evidence that Student had been exposed to domestic violence in Father's home.

158. Ms. Lizama reported on her interview with Student, which lasted for an hour. Student reported hearing voices in his head. When prompted, he stated that they started around middle school, and Paternal Grandmother confirmed the timeline in a telephone interview. One of the voices was a male voice that cursed at Student and told him to kill himself. He denied any suicidal or homicidal thoughts. She reported his suicide attempt when he jumped out of Maternal Grandmother's car. Student reported that he was using methamphetamines at that time, "and the voices became louder." He

reported that “smoking marijuana helps the voices get quiet.” If released, Student wanted to continue receiving counseling support, as he recognized that he had to improve himself and make better choices. Student enjoyed working out, playing games, and spending time with his family. He hated being in juvenile hall, and was ready to be released and be with his family.

159. Student’s most recent report card showed average grades, mostly C’s and B’s, with a few A’s and one D. Ms. Garcia and Student’s math teacher revealed that Student appeared to be well-adjusted and well-behaved in class. He actively participated in class. He asked for assistance and could self-regulate appropriately when he appeared to be frustrated during an assignment. Ms. Garcia reported that Student would be distracted during class at times, but could be easily redirected. He could work on additional assignments in his room if he wanted to, but Student reported that “the voices distract [him] in his room, and [he would rather work in the day room or in class.”

160. Ms. Lizama reported on Student’s various living situations, Mother’s coma, and his family situation. He attended a number of school districts due to his inconsistent living situation. Student tended to be shy, but he enjoyed the company of his peers and wanted to socialize. He was capable of socializing appropriately with his peers and staff, and enjoyed helping his classmates when they appeared to be struggling. Ms. Lizama observed him request support from Probation staff during an art activity. When Student first arrived at Juvenile Hall, he struggled with the adjustment. He did not talk to anyone or ask any questions. In January 2018, his behavior shifted, and he began to ask for help from staff, shared his work during classroom discussions, and socialized with peers. Student requested counseling twice a week initially, but as he began to use coping skills, he only requested weekly support. Student recently began to show some sexual behavior with female staff, which did not appear to have a trigger. Student occasionally would have a disagreement with peers, but he was able to self-regulate and resolve the

conflicts. Student rarely misbehaved, and preferred to “stay under the radar.”

161. During his interview with Ms. Lizama, Student spoke highly of school and probation staff. He felt as though he could talk with school staff when he felt frustrated, but preferred to speak with Paternal Grandmother. Student could focus and communicate with Ms. Lizama during her 60 minute interview with him. Student wanted to leave Kearny Mesa and finish high school in a normal school and be with his family. He did not want to attend a residential treatment facility; he just wanted to move forward with his life.

162. Ms. Lizama concluded that, given Student’s positive participation at school, and his use of assertive and appropriate communication to advocate for himself across settings at Kearny Mesa, Student was not currently exhibiting behaviors, or mental health symptomology, that warranted a more restrictive educational environment beyond a day treatment program. Ms. Lizama believed that Student’s current use of both school-based and outpatient counseling services helped him identify healthy coping skills to use when he was feeling overwhelmed and frustrated in the school setting. She recommended Student continue outpatient mental health treatment for his sexual urges and substance abuse, as well as community-based afterschool activities that would continue to help him with his transition out of juvenile detention. Ms. Lizama also recommended individual and family therapy to work on minimizing auditory hallucinations, identify his triggers, and encourage healthy socialization that could contribute to his success in school. In her opinion, a collaborative effort between school and home would also increase the probability of generalization of his treatment gains across both environments.

INDEPENDENT MENTAL HEALTH ASSESSMENT BY KRISTINA J. MALEK, PH.D.

163. Paternal Grandmother obtained a private psychological assessment of Student from Kristina J. Malek, Ph.D. The assessment was not paid by or through the

County Office of Education. Dr. Malek's assessment was performed at approximately the same time as Ms. Lizama's assessment was occurring. Dr. Malek's report, dated May 5, 2018, did not reflect that she had knowledge of Ms. Lizama's assessment, and Ms. Lizama's report did not reflect that she had knowledge of Dr. Malek's assessment.

164. Dr. Malek received her master's degree in psychology in 2006 and her Ph.D. in clinical psychology in 2010 from the California School of Professional Psychology at Alliant, in San Diego. She is a California licensed psychologist, who has been in private practice as a clinical and forensic psychologist since June 2012. Dr. Malek has no teaching or educational administrative credentials, and, except for serving as a school counselor during an internship, she had no experience providing professional counseling or psychotherapy services in a public school setting. She has never been employed by a California public school serving any part of a kindergarten to 12th grade population.

165. Dr. Malek was contacted by Student's attorney to address his Educational Mental Health Services. She was engaged to evaluate Student for emotional disturbance and identify his needs. Student's attorney was concerned that a previous Mental Health Services assessment performed in January 2018 recommended a day treatment center placement. Student's counsel, advocate, neuropsychologist and his grandparents believed that a residential treatment center placement would better suit his needs, due to the severity of his emotional disturbance.

166. Dr. Malek interviewed and tested Student at Kearny Mesa on April 23, 2018, and May 1, 2018, for a period of approximately four hours. She administered to Student the Achenbach System of Empirically Based Assessment Youth Self-Report and Personality Assessment Inventory-Adolescent Version. As part of her assessment, Dr. Malek also interviewed Paternal Grandmother, who completed the Achenbach System of Empirically Based Assessment Child Behavior Checklist. Dr. Malek's assessment also

included a review of a variety of documents pertaining to Student's criminal case, his education, and his medical and psychiatric history and status.

167. Dr. Malek reported Student's personal and family history. During her interview with Student, Student advised her that his Mother and his stepfather fought a lot, and that his stepfather was verbally abusive towards his Mother. Student believed that he was depressed due to his mother's condition. He started using methamphetamine at the age of 17. He believed that he started using the drug because he felt "depressed and unwanted." He was offered drugs when he was homeless.

168. Dr. Malek summarized Student's elementary school history from secondary sources, as she had no records. She summarized his high school career, including his 2013 psychoeducational assessment performed at Helix, and listed his high school grades. She noted that it was unclear where he had attended high school during certain periods of time, and that he was homeless during unspecified periods of time.

169. Dr. Malek summarized in some detail the neuropsychological examination Dr. Zappone conducted in October 2017. Dr. Malek also summarized some of the results of the County Office of Education's psychoeducational assessment, which occurred in September and October 2017, and the November 3, 2017, report of the assessment.

170. With respect to Student's eligibility for special education, the County Office of Education assessors found Student exhibited learning difficulties consistent with his measured intelligence, processing, and achievement. There was no evidence of a disorder in thought that could be attributed to an emotional condition. Student denied any hallucinations or delusions. The teaching staff did not report any significant bizarre or unusual behaviors. Student did not present with a constant or pervasive sadness in detention or in the classroom, and he did not develop physical symptoms in the face of stressful or fearful situations. Student met criteria for special education under

the handicapping condition of specific learning disability.¹⁸ He had memory deficits and limited cognitive efficiency that affected his reading comprehension and math. Student did not meet the criteria for Other Health Impairment. He did not have a medical condition that affected his vitality or alertness.

171. Dr. Malek also summarized the initial Educational Mental Health Services assessment completed by Ms. Rogers of the County Office of Education in January 2018.

172. During his clinical interview with Ms. Rogers, Student reported that he began experiencing auditory hallucinations at the age of 15. He stated that he was hearing voices while he was speaking with Ms. Rogers. He also reported that he had nightmares every other month about mother and great-grandmother dying. Ms. Rogers diagnosed him with bipolar disorder not otherwise specified, with psychotic features; attention deficit disorder; amphetamine, alcohol, and marijuana disorder, in early remission in a controlled setting. Ms. Rogers concluded that Student had a mental health condition that affected his academic performance, attendance, and peer relationships, which was likely amenable to mental health services. She recommended mental health services to include individual and group therapy and family coordination to facilitate the use of appropriate interventions at home. Ms. Rogers also recommended a medical evaluation from a neurologist and substance abuse services.

173. Dr. Malek also summarized the County Office of Education's speech and language evaluation, performed in January 2018 by speech and language pathologist Christina Everett. Ms. Everett concluded that, in some areas, his speech and language

¹⁸ At one point in her report, Dr. Malek stated that the County Department of Education's assessors did not find Student met the criteria for eligibility in the category of specific learning disability. Given the matters Dr. Malek discussed in her report, and Dr. Malek's testimony, this is a typographical error.

skills fell within the expected range in comparison to his age/developmental level. However, he exhibited a disorder in the areas of language morphology, syntax, semantics, and pragmatics in comparison to his cognitive ability/developmental level/chronological age.

174. Dr. Malek questioned Student about his academic history. Student reported that he attended Helix for ninth and tenth grades, and had difficulty with algebra. He did not believe that his teachers expressed concerns about his academic performance. He also explained that he did not do well in history or math, but excelled at "tech" and Spanish. He did not know what an IEP was, and he denied having any behavior problems in school.

175. Student reported that he could make friends easily. He met a girl in 10th grade, whom he dated for approximately two years. He variously reported that the relationship ended when he was taken into custody or because of his methamphetamine use.

176. Student reported his psychosexual history. He told Dr. Malek he had never been sexually abused. He also described his use of alcohol, marijuana, and methamphetamines. He did not mention the other drugs for which he tested positive after his suicide attempt in June 2016.

177. Dr. Malek summarized Student's legal history. He had no criminal record prior to the subject crime. Student was involved in two incidents while in detention. On November 5, 2017, he failed to comply with the cover command when two other detainees were involved in a fight. In December 2017, he spat in the direction of another detainee while involved in a verbal altercation. Dr. Malek also noted Father's criminal record.

178. Dr. Malek reviewed Student's mental health records. She reviewed his records from Aurora, where he was involuntarily hospitalized during June and July 2016

as a result of his suicide attempt involving his grandmother's car. She also reviewed Student's records from Family Health Centers, where he received mental health services and psychotropic medication in 2017, after he moved back in with Paternal Grandmother. As a client of Family Health Centers, Student met with Dr. Mark Knight for a medication evaluation. Student's chief complaints were anxiety, depression, and irritability. He denied experiencing any hallucinations. Dr. Knight diagnosed Student with bipolar 1 disorder and stimulant use disorder, moderate. He prescribed Lamictal, which treats bipolar disorder.

179. Dr. Malek also briefly summarized Dr. O'Meara's evaluation and Dr. Kelin's assessment. She noted that in mid-July 2017, he was enrolled at Helping Hand, and was attending one session per week.

180. Dr. Malek summarized a psychological and psychosexual evaluation performed by Joseph McCullaugh, Ph.D. in September 2017.¹⁹ Dr. Malek reported that Dr. McCullaugh's misconception of the victim's age and other diagnostic requirements led Dr. McCullaugh to mistakenly diagnose Student with pedophilic disorder. Dr. McCullaugh's other diagnoses included Cannabis Use Disorder, severe, in sustained remission, in a controlled environment; unspecified Attention Deficit Hyperactivity Disorder (by history), and unspecified Bipolar Disorder (by history).

181. Finally, Dr. Malek summarized the fetal alcohol syndrome examination performed by Dr. Jones on November 3, 2017.

182. Dr. Malek summarized her clinical interview with Student. Student reported that he was involuntarily hospitalized on two occasions. He described the occasion when

¹⁹ Dr. McCullaugh's assessment was not offered into evidence by any party. There was no evidence as to the purpose of this assessment, or who referred Student for this assessment.

he attempted suicide by jumping out of his maternal grandmother's car. Student was unaware of any mental health diagnoses he may have received in the past, and denied that there were any mental health problems in the family. Student's description of his mental state at the time of this interview included symptoms of psychosis, including auditory and visual hallucinations. He reported that these hallucinations began around the age of 15 or 16. He believed that these hallucinations began prior to his methamphetamine usage, but acknowledged that his drug use exacerbated these symptoms. Since his detention, he also had tactile hallucinations. He denied any current suicidal ideation, but he reported that he once tried to cut his throat with a knife. He took Abilify to treat his psychiatric symptoms.

183. Paternal Grandmother reported numerous incidents of Student having nightmares, and visual and auditory hallucinations since middle school. When Paternal Grandmother took him to the hospital to have him assessed regarding these symptoms, Student denied them.

184. Dr. Malek reviewed Student's medical history. He appeared to be in good physical health. He denied any history of broken bones, surgeries, or stitches, and any history of significant head injuries, with or without the loss of consciousness. He was injured in a bicycle accident in which he sustained scrapes. He went to the hospital and there were no significant injuries, but Student had told Ms. Everett, the speech and language assessor, that his back continued to hurt. There was also some evidence that Student was physically assaulted when he was homeless and he lost consciousness for some period of time.

185. Student was cooperative throughout the assessment process. He was adequately groomed, and seemed to rock back and forth in his seat throughout the interviews. He made adequate eye contact.

186. Student was oriented in all spheres. His mood appeared depressed and his affect was blunted. He often responded to questions with one or two word responses. He denied suicidal ideation, intent, or plans, as well as having any pent-up feelings of rage or aggression. His thoughts were coherent, and their content focused on some of his mental health concerns. Dr. Malek estimated his intelligence to be within the borderline to low average range, based on prior intelligence testing and his global fund of knowledge. He did not present with obvious delusional thinking, but he reported visual and auditory hallucinations that he experienced while in detention. He denied experiencing any hallucinations during the interviews with her, but Dr. Malek suspected he was responding to internal stimuli, as he exhibited poor concentration and distractibility. Ms. Malek's conclusion on this point is questionable, considering that Student was previously diagnosed with Attention Deficit Hyperactivity Disorder. Recent and remote memory appeared relatively intact. Insight and judgment were poor.

187. Dr. Malek administered the Personality Assessment Inventory, which is an objective self-report inventory to assess personality. She considered the results valid. Student attended appropriately to the items and responded consistently. She read it aloud to him to ensure that he listened to and understood each item, because he had problems with concentration and had begun to respond randomly.

188. Student had an elevation on the drug problems scale, which suggested that his drug use had been sufficient to generate negative consequences in his life, such as strained interpersonal relationships, school and legal problems, and possible health complications. Alcohol may also have caused occasional problems in his life. Student described experiencing some maladaptive behavioral problems to control his anxiety. He likely experienced at least one disturbing traumatic event in the past that continued to cause him distress and anxiety. His response pattern also suggested that he may have certain problems associated with elevated and variable mood.

189. Student's self-concept varied from states of pessimism and self-doubt to relative self-confidence. Dr. Malek considered these fluctuations as typical of adolescents.

190. He seemed to view his personal style as confident and assertive, and he was comfortable in most social settings. He said he had experienced very few stressful events in the recent past, and he had a level of support that was about average when compared to most adolescents.

191. Dr. Malek administered the Achenbach to assess Student's current level of functioning. The Achenbach is a standardized test that assesses a broad spectrum of competencies; adaptive functioning; and behavioral, emotional, and social problems. The assessment included a youth self-report form, a child behavior checklist, and a teacher report form. Paternal Grandmother completed the child behavior checklist. She reported that Student enjoyed various activities, but did not have any friends and was not a member of any organizations, clubs, or teams. He seemed to get along well with his siblings and peers. She described that he struggled in school for many years, and had bipolar disorder. She reported on his visual and auditory hallucinations. She was concerned about his inability to retain information, his auditory and visual hallucinations, and his inability to establish employment and live independently. Based on Paternal Grandmother's ratings of Student, Student's Total Competence score was in the clinical range. The Total Competence Score is comprised of three scales, including the Activities, Social, and School scales. Paternal Grandmother's ratings placed Student within the normal range on the Activities scale, within the clinical range on the Social scale, and at the low end of the normal range on the School scale.

192. In addition to the Competence scale, the Child Behavior Checklist has Problem/Syndrome scales, which are divided into "internalizing, which refers to problems mainly within the self, and externalizing, which refers to conflicts with other

people. Other categories on the scales included social problems, thought problems, attention problems, and other problems, such as overeating, and animal cruelty. Paternal Grandmother's rated Student as having clinical elevations on scales measuring anxious/depressed, somatic complaints, thought problems, attention problems, and rule-breaking behavior.

193. Student completed the Youth Self-Report to obtain his perceptions of his competencies and problems. He reported that he enjoyed bike riding, martial arts, and fishing. His hobbies included listening to the radio, reading books, and cars. Dr. Malek noted that reading books and cars were listed as examples on the test page, and the directions specifically stated not to include listening to the radio. He had one job at home, which was to make his bed. He reported that had two or three friends and got along with family and friends better than others his age. He believed that he was performing below average to average in school. He had difficulty understanding math, and was concerned about distractions. He believed the best thing about himself was that he was good at Spanish class. Student's ratings gave him a Total Competence score that fell within the clinical range. He was below the 16th percentile on the Activities Scale, and was in the low range of normal for the Social Scale. On the Syndrome Scales, he had clinical elevations for anxious/depressed, somatic complaints, and social problems.

194. Dr. Malek's report included a discussion of sexual risk assessment. She noted the difficulty in reliably determining an adolescent's risk for sexually reoffending, and reviewed the research on adolescent sex offenders. Research suggested that adolescents who engaged in sexually abusive behavior can be safely treated and managed within the community. Since adolescent sex offenders and adult sex offenders tended to be quite different, interventions commonly used with adult sex offenders were likely to be inappropriate for an adolescent sex offenders. Therefore, community-based

treatments were generally recommended.

195. Dr. Malek's diagnostic impression of Student, based upon the Diagnostic and Statistical Manual-5, were: Schizophrenia, Unspecified; Stimulant Use Disorder, severe, in early remission, in a controlled environment; Cannabis Use Disorder, severe, in early remission, in a controlled environment; Other Specified Trauma-and Stressor-Related Disorder (complex trauma); Upbringing Away from Parents; Other Personal History or Psychological Trauma; Other Circumstances Related to Child Sexual Abuse (perpetrator). Dr. Malek did not include any diagnoses related to intellectual functioning, learning disability, and language disorders.

196. Dr. Malek summarized her findings. She considered Student to have a complex history and symptom presentation, including exposure to alcohol and perhaps other drugs in utero, exposure to parental substance abuse, ongoing domestic violence, and possibly abuse. She based the latter on concededly unsubstantiated reports of physical abuse, neglect, and verbal abuse. She also considered that, according to Student's previous mental health services examination of January 2018, Paternal Grandmother said that Student had told her he was a victim of sexual abuse, but he denied any sexual abuse directly to Dr. Malek.²⁰ She viewed Student as abandoned by his parents and raised by his grandparents off and on through the years. He may have felt unwanted or unloved because his half-siblings were able to live with Mother prior to her stroke, but he was not. Mother's vegetative state continued to be a source of sadness and grief for him. From middle school he began to experience psychotic

²⁰ Dr. Malek's report did not further specify the report to which she referred for this information. Her reference to the date of the report corresponds to the date of Ms. Rogers's assessment report, but Dr. Malek did not include this information regarding sexual abuse in her summary of Ms. Rogers's report.

symptoms in the form of auditory and visual hallucinations, and his mental health symptoms were complicated to diagnose because he began to use drugs at about the same time period. Student also struggled in school over the years and was not eligible for special education until he was 18 years old.

197. Dr. Malek concluded, "Based on the information available, *it would seem* that Student presents with a number of risk factors for the development of a mental health disorder(s)." (Emphasis added.) Dr. Malek reported that Student was exposed to Type II trauma, which is also called complex trauma), which occurred when the individual was exposed to prolonged or repeated traumas, such as ongoing abuse, and domestic violence. Complex trauma could create more severe developmental deficits, and was associated with a higher risk of developing post-traumatic stress disorder. It was especially more devastating when the abuse/trauma was perpetrated by someone known to the victim. Some of the behavioral symptoms seen in adolescents with this type of trauma include mood swings, avoidance, aggression, drug and alcohol addiction, self-harm, and other maladaptive behaviors. Research also showed that trauma was a risk factor for psychosis.

198. It was unclear to Dr. Malek whether Student began using drugs before or after he started experiencing psychotic symptoms. Both Student and Paternal Grandmother reported that his substance abuse began after he started experiencing mental health problems. Dr. Malek reported that drugs such as marijuana and methamphetamine can cause psychosis, and have other negative effects on the brain. Since Student continued to experience psychotic symptoms while in juvenile detention, in the absence of drug use and in the absence of any manic symptoms, she believed that schizophrenia was the most appropriate diagnosis, which was co-occurring with substance abuse disorders, as well as a trauma history. She also concluded that "his symptoms have clearly interfered with his social, interpersonal, and educational

functioning.” She stated that a diagnosis of schizophrenia met the eligibility criteria for an Emotional Disturbance according to the California Code of Regulations. As is further discussed below, this is not accurate.

199. Dr. Malek believed outpatient treatment would be insufficient to meet all of Student’s needs. Rather, she recommended that, upon his release from juvenile detention, Student have a multidisciplinary team of professionals, including a case manager, a psychiatrist, a social worker, a vocational specialist, and a substance abuse treatment specialist. She also recommended random drug and alcohol screening, and medication evaluation and monitoring. Dr. Malek proposed psychosocial interventions to include supportive individual psychotherapy, skills training, and cognitive therapy. She strongly endorsed family participation in the treatment process. She did not believe group therapy would be effective, as Student appeared to respond to his hallucinations and had problems sustaining attention due to these psychotic symptoms. Individual therapy would include addressing Student’s sexually abusive behaviors. With regard to housing, she recommended a residential program, independent living facility, or board and care. She believed Student needed a structured environment to assure his abstinence from alcohol and drugs and to better manage his mental health symptoms.

200. Dr. Malek testified at hearing and expanded upon her report. She believed that Student’s answer on the Behavior Assessment when he was assessed by Helix that he heard voices could be an indicator of psychosis. The Helix assessment also showed that Student experienced stress with respect to his life situation and he felt that others did not understand him. The finding by Dr. Jones that Student was on the spectrum of fetal alcohol syndrome was not related to her diagnosis of schizophrenia, but she believed it could relate to cognitive deficits or health difficulties. She diagnosed Student with schizophrenia because he presented with positive symptoms (auditory, visual, and tactile hallucinations) and negative symptoms, such as lack of energy, lack of motivation,

and flat affect.

201. Dr. Malek believed the symptoms that other assessors found to be indicative of previous diagnoses of bi-polar disorder were actually due to Student's methamphetamine usage, which could cause the appearance of mania. Dr. Malek testified that individuals with schizophrenia often used drugs to self-medicate. Therefore, she believed that those previous diagnoses of bi-polar disorder were incorrect. Student was not using drugs while incarcerated, and therefore she did not see those symptoms, and he did not report them to her. In her opinion, to a reasonable degree of medical certainty he had hallucinations and schizophrenia during the 2015-2016 school year, but his schizophrenia was masked by his substance abuse. She based this opinion on ongoing reports of his hallucinations by family members. He began to experience them in 2013, and suspected they continued to persist. He also exhibited negative symptoms of schizophrenia, such as social withdrawal. Based on her review of his previous psychological reports, he reported or presented with positive and negative symptoms of schizophrenia all along.

202. Dr. Malek believed that schizophrenia interfered with Student's ability to learn. Based on the materials she reviewed, he would sometimes have difficulty on the achievement and academic tests, which she attributed to Student's hallucinations interfering with his concentration, attention, and focus. She posited that if he had hallucinations at school, they could affect his concentration and ability to attend, and thereby interfere with his educational performance. Some reports she reviewed mentioned that he walked around the classroom instead of sitting, which she also considered a manifestation of his mental health symptoms. Dr. Malek's opinions as to the impact schizophrenia could have on Student's ability to learn were highly speculative, as she had no specific information that Student's academic performance was so impacted by Student's alleged schizophrenia.

203. Dr. Malek believed that the inconsistencies in Student's cognitive scores and achievement scores on previous assessments could be affected by a mental health disorder affecting his ability to concentrate. Similarly, it was "definitely a possibility" that auditory hallucinations such as those Student had previously reported to Dr. Kelin could affect Student's ability to concentrate on and attend to the assessments. Again, however, Dr. Malek had no specific information that Student's difficulties on previous assessments were impacted by any hallucinations.

204. Dr. Malek was also concerned about reports of Student's command auditory hallucinations because one did not know whether those would lead to self-injury or put others at risk. She believed that Student required therapy, including long-term trauma therapy, preferably with one therapist to promote continuity of care. Student had experienced several traumatic events. Once he developed a rapport with a therapist, and his mental health had stabilized, he needed to develop his coping skills to better process his trauma experiences, and then work to process his trauma experiences. She commented that her treatment recommendations, including placement in a residential treatment center or board and care residence, would have been applicable in 2015-2016.

205. Dr. Malek had never observed Student outside of Kearny Mesa. She never met or observed him at a comprehensive public school site, or met with him at any time prior to April 23, 2018. She did not review any records from Lincoln with respect to the 2015-2016 school year, except a transcript of his grades. She did not attempt to request any records from Lincoln. She did not attempt to speak to any teacher from Lincoln. She did not interview Maternal Grandmother, with whom he lived during the 2015-2016 school year. She was not aware Student received mental health counseling at Lincoln during the 2015-2016 school year. She was not aware that San Diego Unified had prepared an Assessment Plan and that Father had not signed it. She did not know

whether Student had any hallucinations in the classroom while he was attending San Diego Unified, or whether they interfered with his education. She knew that he did not have good attendance while at Lincoln, and that poor attendance could negatively affect his grades.

206. Dr. Malek's opinions that Student suffered from schizophrenia, and suffered from schizophrenia when he attended Lincoln 2015-2016, are outliers. Numerous medical and mental health professionals had examined and assessed Student prior to Dr. Malek, and not one of them wrote a report that diagnosed Student with schizophrenia. Indeed, not one of them even proposed schizophrenia as a "rule out" diagnosis. Dr. Malek attempted to explain that other professionals had not diagnosed Student with schizophrenia because his symptoms were masked by his drug use, and, since Student was incarcerated when she assessed him, he was not under the influence of drugs. However, Dr. Malek also asserted that individuals with schizophrenia often use drugs to self-medicate. If that is so, then mental health professionals should be accustomed to diagnosing schizophrenia in individuals who use drugs. (If this were not so, then one should conclude that all individuals who were diagnosed with schizophrenia were only diagnosed when they were abstinent, which strains credulity.) It would also suggest that a mental health professional would often give a "Rule out Schizophrenia" diagnosis when evaluating an individual with Student's symptoms, and who, like Student, used drugs. Finally, other mental health professionals who evaluated Student, such as Dr. Zappone, Ms. Lizama, and Ms. Rogers assessed Student when he was incarcerated, and not under the influence of drugs, and none of them included a diagnosis of schizophrenia in their reports.

207. Dr. Malek's opinions that Student suffered from schizophrenia during the 2015-2016 school year and required extensive treatment and some form of residential care are attenuated and unpersuasive. She did not know Student then, and did not

oversee the counseling he received then. She did not speak to any of his teachers at Lincoln, and did not know that Ms. Inskeep had provided counseling to Student. She did not say how his schizophrenia could have affected his education beyond noting his difficulty focusing in class, and then hypothesizing that if he had a hallucination during class, he would not have been able to focus on the teacher. However, she did not know whether he had hallucinations in class at Lincoln or Twain, and had no knowledge as to whether any such hallucinations, if they occurred, actually affected Student's ability to focus. In fact, Student reported no hallucinations to Ms. Inskeep. Moreover, neither Student nor his family reported Student had a history of any hallucinations until after Student was arrested. Dr. Malek expressed no awareness of the evolution of Student and Paternal Grandmother's reports of his history of hallucinations, which also calls into question Dr. Malek's analysis that Student has, and had, schizophrenia. Further, Dr. Malek's opinion on Student's ability to focus in class did not take into account that Student had been diagnosed with attention deficit hyperactivity disorder by Dr. Zappone, which could also affect his ability to focus in class.

208. Dr. Malek was never employed by a K-12 California public school. She had no teaching credentials. Except for a brief reference to finding a placement in the least restrictive environment, and to the portion of the California Code of Regulations that characterized schizophrenia as an emotional disturbance, Dr. Malek's report and recommendations did not discuss Student's educational needs, and did not reflect an understanding of the criteria for an eligibility of emotional disturbance. Rather, her assessment and opinions she focused on Student's medical and psychological needs: to treat his drug and alcohol abuse and his sexual issues, and to manage his psychotic symptoms.

IEP TEAM MEETING OF MAY 8, 2018

209. On May 8, 2018, the County Board of Education convened another IEP

team meeting, to review the results of Ms. Lizama's independent evaluation. The IEP team included Paternal Grandmother; her husband; Student; a general education teacher; Ms. Garcia; Ms. Everett (a speech and language therapist); a school administrator; Ms. Dominguez; Dr. Malek; Ms. Lizama; Mr. Enns; Dr. Edwards; Student's attorney; and the attorney for the County Office of Education.

210. The team reviewed Student's present levels of performance. Student was currently attending class daily, following classroom rules and expectations, and earning passing grades. He participated in classroom activities, such as sharing his daily journal prompt, asking for help when needed, and helping classmates with their assignments.

211. Paternal Grandmother reported Student "was having difficulty relaying what he was working on." She stated he had difficulty retaining information. Student told her he was having hallucinations, such as seeing people in his room, feeling bounding under his bed, hearing voices.

212. Dr. Malek reviewed her assessment, and stated Student may need wrap-around services, high structure, and services coordinated with a psychiatrist and case worker. She reported he would likely be eligible for Social Security benefits based on his diagnosis.

213. Ms. Dominguez reported that Student was focused in his sessions, and open to discussing and describing his feelings. He journaled and remembered what he journaled. He was seeing another therapist to work on his trauma issues.

214. Ms. Lizama reviewed the results of her independent assessment. Student shared with her he did not want a residential placement, but knew he needed additional supports. She recommended day treatment services with wraparound services as the least restrictive setting. She did not believe Student needed residential services to meet his academic needs.

215. Student's Probation Officer, Mr. Enns, asserted that, when housing was established, outpatient services would be appropriate. Student was not currently being held in custody for his offense, but rather was in custody pending a determination as to his residence.

216. Dr. Edwards stated she agreed that day treatment would be appropriate, but Student needed a residential treatment center placement when he was discharged because he had no housing due to his behavior.

217. The team discussed whether there should be changes to goals. The County Office of Education agreed with Student's current goals. Dr. Edwards believed Student required additional goals, but the IEP notes stated she did not propose new goals.

218. The team agreed with the current level of services. Upon Student's release, the team recommended the following program: mild/moderate specialized academic instruction meeting graduation requirements for core academic subjects; 60 minutes weekly individual Mental Health Services counseling; 120 minutes monthly family counseling; 120 minutes monthly school social worker services; and daily round trip transportation. The team also discussed transition services to Student's next academic placement. The team agreed to consultation between the current education specialist and new education specialist and school social worker; and consultation between the current Mental Health Services provider and school psychologist and the new Mental Health Services provider. Student would visit his new school placement prior to starting there.

219. On May 10, 2018, Paternal Grandmother submitted her signed consent to the IEP, noting her disagreement with placement and services, along with an addendum. She requested the IEP to reflect that placement on release from custody should be a residential treatment facility. Further, she requested that the notes reflect Dr. Edward's statement that Student's educational needs were similar to those of developmentally

disabled children. Student needed to be taught life skills, such as how to budget, shop, cook, use public transportation, find a job, socialize, find recreation, and deal with law enforcement. Finally, Paternal Grandmother asserted the IEP misquoted Dr. Edwards when it stated that she did not propose new goals at the meeting. Rather, according to Paternal Grandmother's addendum stated Dr. Edwards proposed many more goals regarding learning independent living skills and managing mental illness.

220. Kathleen K. Edwards, Ed.D., Student's educational advocate and one of Student's expert witnesses, concurred with Dr. Zappone's and Dr. Malek's opinions that Student would have had the same educational and mental health needs during the 2015-2016 school year they learned of during their assessments, and San Diego Unified should have assessed Student and provided him special education services. Dr. Edwards received her bachelor's degree in education from the University of Minnesota at Mankato, and her master's in special education from Northern Arizona University. She also received her Ed.D. in curriculum and instruction, with an emphasis in special education administration, from Northern Arizona University. From 1991 through 1996, she was Director of Behavioral Health for Sharp Healthcare, where she was responsible for budget and managed staff. From 1998-2000 she was a high school special education teacher for students with mild to moderate disabilities. From 200-2002 she was a program specialist with the San Diego County Office of Education. She is currently a special education advocate. She was a volunteer at the San Diego County Juvenile Justice Commission from 2008 to 2016. She held, but let lapse, a multiple subject teaching credential, and a specialist instruction in special education credential.

221. Dr. Edwards met with Student two times, and observed him in class at Kearny Mesa two times. She interviewed both grandmothers, and reviewed some of Student's records. Dr. Edwards did not write a report.

222. She believed that the various diagnoses contained in the reports of Dr. Patel, Dr. Kelin, and Dr. O'Meara impacted Student during the 2015-2016 school year. She stated that the hallucinations referred to by Dr. Kelin could have impacted Student's education, because, if they occurred in class, they could have interfered with Student's ability to listen to the teacher. In her opinion, Student's long history of abuse and neglect would have made it difficult for him to learn in school without much therapeutic support. She asserted that the diagnosis that Student was on the spectrum of fetal alcohol syndrome meant that he had an incurable developmental brain disorder since birth.

223. She described her two classroom observations of Student in November 2017, which was the first time she met Student, and May 2018. On both occasions, she observed Student's math class, with the same math teacher, at the same time of day. During the November observation, Student did not perform the class assignment. Rather, he slapped his hands on the desk, stamped his feet on the floor, sang aloud, left his desk and walked around the room, and threw his body into a wall. He did not disrupt or engage other Students. The teacher redirected him to the assignment, and gave him a clean piece of paper so he could work on it, but he had not done the assignment by the end of class. During the May observation, Student was sitting at a table with another student sitting next to him. There was an algebra problem on the board for the students to solve. Student rocked in his seat, slapped his hands on the table, stomped his feet on the floor, and left his seat and walked around. His table-mate would redirect him, and his teacher checked with him as to whether everything was all right. Student asked no questions of the teacher. Student copied his table-mate's answers and turned them in at the end of class.

224. Dr. Edwards believed that Student required residential treatment, because he had no home to go to after he was released from custody, and he had not had long-

term therapy regarding his trauma issues. She was concerned that if he were not in a very structured setting he was at risk for abusing drugs again. Rather, he required placement in a highly structured residential treatment center, which could treat his trauma, sobriety, sexual boundaries, and depression issues, where he could learn how to manage his mental health issues, and receive assistance in activities of daily living and functional skills. He also required a very small classroom environment. In her opinion, Student functioned as a developmentally delayed young adult, and therefore needed assistance in caring for himself. She stated that an outpatient program was unsuitable because he did not have a place to live. She asserted that he needed a residential component to his program to learn functional and vocational skills, and time management. The residential component must also coordinate with his school setting. She thought it was unlikely that he would voluntarily participate in a day treatment program so that he could complete his education.

225. To successfully complete his education, she asserted he needed specialized academic instruction, much of which should be one-to-one. He needed counseling as to the classes to take, speech and language services, and individual and group counseling. In her opinion, Student would have needed these related services in 2015-2016 if he had an IEP at that time, and thought that if he had received these services, it might have ameliorated his need for placement in a residential treatment center.

226. Dr. Edwards presented calculations of the placement and services Student would need in a school setting to access his education for one school year. She calculated out of state residential tuition and room and board to total \$135,000. His related services would consist of 30 weeks of each of the following: social emotional counseling 1 hour per week individual, at \$75.00 per hour; and 1 hour per week, group, at \$50.00 per hour; Specialized Academic Instruction for 20 hours per week, group, at

\$75.00 per hour, and individual speech and language services for one hour per week at \$50.00 per hour.

227. Dr. Edwards's opinions were not persuasive. She was not a physician, nor a mental health clinician, nor a licensed school psychologist. She had never conducted a mental health assessment, and was not qualified to assess for or diagnose mental health issues. She never attempted to contact Student's teachers at Lincoln or Twain, or obtain his records from San Diego Unified. Her opinions as to the effect of Student's family dysfunction and his various mental health diagnoses upon Student's education did not refer to any research, or scientific sources, or even to any training or experience she might have had in these areas. Additionally, there was no evidence that she had any experience or training with respect to substance abuse issues. Her experience as a classroom teacher did not reflect that she had any particular insight into how Student's particular circumstances, weaknesses, and disabilities impacted Student's education, and she had consulted with nobody at San Diego Unified regarding these issues. There was very little basis for her opinions beyond her own theories and hypotheses, and she inappropriately relied upon medical information which she was not qualified to understand or evaluate.

228. Dr. Edwards's conclusion that Student was developmentally disabled by virtue of his diagnosis of being on the spectrum of fetal alcohol syndrome spectrum lacked foundation. Dr. Jones's evaluation of Student for fetal alcohol syndrome was a medical evaluation performed at the behest of Student's criminal defense attorney; it was not an educational assessment. Dr. Jones did not testify at hearing, and there was no testimony by any expert in fetal alcohol syndrome as to the effect that being on the spectrum of fetal alcohol syndrome had on Student's education during the period at issue. There was no evidence that Student had any specific developmental disability due to being on the spectrum of fetal alcohol syndrome during the period at issue. Indeed,

Ms. Inskeep's behavioral health assessment dated June 26, 2015, reflected that Student's development overall was age-appropriate.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA²¹

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.;²² 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, independent living and higher education; 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.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive

²¹ Unless otherwise stated, the paragraphs in this *Introduction* are incorporated by reference into the analysis of each issue discussed below.

²² Unless otherwise stated, all subsequent references to the Code of Federal Regulations are to the 2006 version.

services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel. The IEP describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. *In Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to [a child with special needs]." *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, the *Rowley* court decided that the FAPE requirement of the IDEA was met when a child received access to an education that was reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) 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 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) 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. 950, fn. 10.)

4. The Supreme Court recently decided the case of *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ___ [137 S. Ct. 988] (*Endrew F.*) and clarified the *Rowley* standard. *Endrew F.* provides that an IEP must be reasonably calculated to enable “progress appropriate in light of the child’s circumstances.” (137 S.Ct. at 999.) The Court recognized that this required crafting an IEP that required a prospective judgment, and that judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Ibid.*) Additionally, the Court stated, “for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, ‘be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’ ” (*Id.* at 999 [citing *Rowley, supra*, 458 U.S. at 203-204].)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528; 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student is the petitioning party and has the burden of persuasion as to his issues.

ISSUE: WHETHER SAN DIEGO FAILED TO PERFORM ITS CHILD FIND OBLIGATION

6. Student contends San Diego Unified did not make sufficient efforts to obtain Father's consent to assessment, and should have filed for due process to receive permission to assess Student without Father's consent. Student contends that Student was eligible for special education during the 2015-2016 school year when he resided in San Diego Unified under the eligibility categories of specific learning disability and emotional disturbance. Further, San Diego Unified should have found Student so eligible, and provided him specialized academic instruction and intensive mental health services, and placed Student in a residential treatment center. Student contends that San Diego Unified's failure to perform its child find obligations to Student deprived him of a FAPE, and that Student is entitled to compensatory education.

7. San Diego Unified contends that it offered to assess Student and that Father ignored its attempts to have him sign consent for the assessment. San Diego Unified could not assess without Father's consent, and was under no obligation to file a due process complaint to obtain permission to assess. Therefore, San Diego Unified contends that it fulfilled its child find obligation to Student and did not deprive Student of a FAPE. Furthermore, San Diego Unified contends that its conduct should be evaluated based upon what it had reason to know during the school year 2015-2016, and not based upon hindsight.

Procedural Violations Of The Idea

8. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) Citing *Rowley, supra*, the court also recognized the

importance of adherence to the IDEA procedural requirements, but determined that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at p. 1484.) This principle was subsequently codified in the IDEA and Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

Child Find

9. A school district is required to actively and systematically seek out, identify, locate, and evaluate all children with disabilities, including homeless children, wards of the state, and children attending private schools, who are in need of special education and related services, regardless of the severity of the disability, including those individuals advancing from grade to grade. (20 U.S.C. § 1412(a)(3)(A); Ed. Code, § 56171, 56301, subds. (a) and (b).) This duty to seek and serve children with disabilities is known as "child find." A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (*Cari Rae S.*)) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot circumvent that responsibility by way of informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105,

1121. (*Timothy O.*). The school district's duty for child find is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Cari Rae S., supra*, 158 F. Supp. 2d at p. 1194.); *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031.)

10. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, and that special education services may be necessary to address the disability must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031).) Further, a student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.)

Assessments/Consent To Assess

11. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) "The purpose of the child-find evaluation is to provide access to special education." (*Fitzgerald v. Camdenton R-II School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) Children identified in the child find process are assessed to determine whether the child qualifies as a student with a disability under the IDEA and, if so, to determine the nature and extent of the special education and related services the child needs. (20 U.S.C. § 1414 (a)(1))(C)(i); 34 C.F.R. § 300.15.)

12. A request for an initial evaluation to determine what a student is a child with a disability in need of special education and services can be made by either the parent or a public agency, such as a school district. (34 C.F.R. § 300.301(b).) Parents must be given proper notice of a district's decision to conduct an initial evaluation of a child, including prior written notice pursuant to 34 Code of Federal Regulations part 300.503. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3), (c)(1); 34 C.F.R. § 300.300(a)(1); Ed. Code, §§ 56321, subd. (a), 56500.4.) The notice to parent also consists of the proposed assessment plan, and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, §§ 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and in the native language of the parent; explain the types of assessments to be conducted; and notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).) After providing such notice, the school district shall obtain informed consent from the parent before conducting the initial evaluation. (20 U.S.C. § 1414(a)(1)D)(i)(I); 34 C.F.R. § 300.300(a)(1)(iii); Ed. Code, § 56321, subd. (c)(1).)

13. With exceptions not applicable here, the school district has 15 days after the referral for assessment to give the parent an assessment plan along with a copy of the parental rights document. The school district must give parent at least 15 days to review, sign consent, and return the assessment plan. The school district has 60 days from the date it receives the signed and consented to assessment plan to complete the assessment and hold an IEP to discuss the assessment results. (Ed. Code, §§ 56321, subd. (a), (c)(4), 56302.1.)

14. The school district must make reasonable efforts to obtain informed consent from the parent for an initial evaluation. (34 C.F.R. § 300.300(a)(1)(iii); Ed. Code, § 56321, subd. (c)(1).) To meet the reasonable efforts requirement of 34 Code of Federal Regulations part 300.300(a)(1)(iii), the school district must document its attempts to

obtain parental consent, using the procedures in 34 Code of Federal Regulations part 300.322(d). (34 C.F.R. § 300.300(d)(5).) These procedures consist of keeping a record of its attempts to obtain consent, such as keeping detailed records of telephone calls made or attempted, and the results of those calls; copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits. (34 C.F.R. § 300.322(d).) The Education Code has the same requirements. (See Ed. Code, § 56321, subd. (g).)

15. A school district may, but is not required to, pursue an initial evaluation of a child enrolled in a public school who is suspected of having a disability if the parent does not provide consent for the initial evaluation, or fails to respond to a request to provide consent. (34 C.F.R. § 300.300(a)(3)(i); 71 Fed. Reg. 46, 632 (2006); Ed. Code, § 56321, subd. (c)(2).) If the district declines to pursue the assessment under these circumstances, the district does not violate its child find duties, its assessment obligations, and its obligations to determine eligibility for special education. (34 C.F.R. § 300.300(a)(3)(i); Ed. Code, § 56321(c)(3).) Furthermore, there does not appear to be a duty on the part of the district to give parent another prior written notice (in addition to the one provided along with the assessment plan), if the parent fails to respond to a request for assessment. (See 71 Fed. Reg. 46, 632-46, 633 (2006)).

16. The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the pupil has a disability or whether the pupil's educational program is appropriate. (20 U.S.C. § 1414 (b)(2), (3); Ed. Code, § 56320, subds. (e) & (f).) The assessment must be sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the child's disability category.

(34 C.F.R. § 300.306.)

Eligibility For Special Education

17. Under both California law and the IDEA, a child is eligible for special education if the child needs special education and related services by reason of a variety of disabilities, including a specific learning disability and emotional disturbance. (20 U.S.C §1401 (3)(A)(i) and (ii); 34 C.F.R. § 300.8(a); Cal.Code Regs., tit. 5, §3030, subds. (a), (b)(4), (b) (10).)

18. A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language, which may manifest itself in a diminished ability to listen, think, speak, read, write, or perform mathematical calculations. It include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, and developmental aphasia, but it does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (20 U.S.C., § 1401(30); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive ability including association, conceptualization, and expression. (*Ibid.*)

19. A school district shall determine that a child has a specific learning disability using one of several methods. One method is the response to research based interventions method. (Cal.Code Regs., tit. 5, § 3030, subd. (b)(10)(C)(2)(i).) There was no evidence that this method was used in this case. Another method is the severe discrepancy method, which requires that a student have a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B).) In California, a

severe discrepancy is defined as 1.5 standard deviations (22.5 points or more of difference), adjusted for one standard error of measurement, between the intellectual ability test score and the academic achievement test score, when such discrepancy is corroborated by other assessment data. (Ed. Code, § 56337, subd. (b); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B)(1).) If the standardized test scores do not reveal a severe discrepancy, a district may also find that a severe discrepancy exists if the IEP team documents in a written report that the severe discrepancy between ability and achievement is a result of a disorder in one or more of the basic psychological processes. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B)(3).) In either case, a severe discrepancy shall not be primarily the result of limited school experience or poor school attendance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B)(4).)

20. A child meets eligibility criteria for emotional disturbance if the child exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

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

(34 C.F.R. § 300.7(c)(4)(i); Cal. Code Regs., tit. 5, §3030(b)(4).) Emotional disturbance includes schizophrenia. (34 C.F.R. §300.7(c)(4)(ii); (Cal. Code Regs., tit. 5, §3030(b)(4)(F).) Neither the IDEA nor its regulations, nor the Education Code nor its

regulations, define “to a marked degree” or “a long period of time.”

21. The student does not meet special educational eligibility criteria for emotional disturbance if the student is socially maladjusted, unless the student has emotional disturbance. (34 C.F.R. § 300.7(c)(4)(ii.); Ed. Code, § 56026, subd. (e).)

Least Restrictive Environment

22. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a).)

23. If the IEP team determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050; *B.S. v. Placentia-Yorba Linda Unified School Dist.* (9th Cir. 2009) 306 Fed.Appx. 397, 400.) The continuum of program options includes, but is not limited to, regular education, resource specialist programs, related services, special classes, nonpublic, nonsectarian schools, state special schools, specially designed instruction in settings other than classrooms, itinerant instruction in settings other than classrooms, and instruction using telecommunication instruction in the home or instruction in hospitals or institutions. (Ed. Code, § 56361.)

24. In selecting the least restrictive environment, the IEP team should consider any potential harmful effect on the child or on the quality of services that the child

needs. (34 C.F.R. §300.116(d).) The child should be educated in the school the child would attend if the child were not disabled, unless the IEP otherwise requires. (34 C.F.R. § 300.116(c).) A placement must foster maximum interaction between disabled students and their nondisabled peers “in a manner that is appropriate to the needs of both.” (Ed. Code, § 56000, subd. (b).) Mainstreaming is not required in every case. (*Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1056.) However, to the maximum extent appropriate, special education students should have opportunities to interact with general education peers. (Ed. Code, § 56040.1.)

LEGAL ANALYSIS

Did San Diego Unified’s Assessment Plan Meet Legal Requirements?

25. San Diego Unified’s Assessment Plan met legal requirements for assessment plans. It was written in English, which was Father’s language, it was understandable, it explained the types of assessment to be conducted, and notified Father that no IEP would result from the assessment without parental consent. The Assessment Plan included a variety of assessments, and covered all areas related to Student’s suspected learning disability.

26. The Assessment Plan itself also met the requirement of prior written notice as set forth in title 34 Code of Federal Regulations, part 300.503, and Education Code section 56500.4, in that it explained that San Diego Unified was initiating an assessment for special education, it gave a description of the assessment procedures, advised Father of his rights and procedural safeguards, and gave Ms. Klin’s name and number as a resource if Father had any questions.

Were San Diego Unified’s Attempts to Obtain Father’s Informed Consent Sufficient?

27. The law required San Diego Unified to make reasonable efforts to obtain informed consent from Father for an initial assessment. To meet this requirement, San Diego Unified was required to document its efforts to obtain consent, such as keeping detailed records of phone calls to Father, and the results of those calls, keeping copies of correspondence between San Diego Unified and Father, and maintaining detailed records of visits made to Father's home or place of employment. The evidence reflected that Ms. Klin gave the Assessment Plan to Student to deliver to Father and obtain his signature on the Assessment Plan, and personally followed up with Student regarding obtaining Father's signature on the Assessment Plan. Further, she engaged in unsuccessful attempts to contact Father by phone, and an unsuccessful road trip to meet Father at his residence to obtain his signature on the Assessment Plan. Finally, she mailed the Assessment Plan to an address obtained from San Diego Unified's computerized records system. However, San Diego Unified produced no records to document any of these efforts, as prescribed by 34 Code of Federal Regulations parts 300.300(d)(5) and 300.322(d), and Education Code section 56321 (g). Indeed, such documentation would have been particularly important in this case, as Ms. Klin did not recall which address she drove to in her attempt to meet Father, or the address to which she mailed the Assessment Plan. San Diego Unified had two addresses for Student: Father's address and Maternal Grandmother's address, which was where Student lived and which was near Father's address. Presumably, documentation of Ms. Klin's efforts to get the Assessment Plan signed would reflect the address where she went to hand-deliver the plan, and the address to which she mailed it.

28. Therefore, San Diego Unified failed to make reasonable efforts to obtain Father's informed consent, pursuant to 34 Code of Federal Regulations part 300.300(a)(1)(iii); and Education Code, section 56321, subd. (c)(1). Furthermore, after Student transferred from Lincoln to Twain, San Diego Unified inexplicably and unlawfully

abandoned all efforts to obtain Father's informed consent to the Assessment Plan, and never assessed Student. As was determined in the Order previously issued in this matter on May 9, 2018, San Diego Unified's child find obligation to Student extended throughout the 2015-2016 regular school year, therefore, San Diego Unified was required to pursue reasonable efforts to obtain Father's consent to the assessment plan. Finally, there was no evidence that Father ever expressly refused to sign the Assessment Plan, which arguably might have relieved San Diego Unified of its obligation to use reasonable efforts to obtain Father's informed consent. Rather, Father had spoken with Ms. Inskeep about her belief that Student should be assessed for special education, and had cooperated with her efforts to obtain a copy of the previous special education assessment performed by Helix. Father never advised San Diego Unified that he did not want Student to be assessed for special education.

Whether Student Would Have Been Found Eligible For Special Education
Had San Diego Unified Assessed Student

29. As was stated in Legal Conclusion 8, procedural violations of special education law are not always actionable. They are actionable if they (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child, (3) or caused a deprivation of educational benefits. When a student is ineligible for special education, procedural violations of child find are not actionable, because Student is not entitled to a FAPE, and is not deprived of educational benefit. Therefore none of the three prongs exist. (*R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 942.) Here, however, the failure of San Diego Unified to make reasonable efforts to obtain informed consent from Father is actionable under each of these three prongs.

30. First, the weight of the evidence demonstrated that, had San Diego Unified assessed Student, he would have likely been found eligible for special education under

the category of specific learning disability. Ms. Inskeep reasonably suspected that Student had such a disability, and thereby started San Diego Unified's efforts to assess Student. Student's grades at Lincoln were very poor, and his educational history reflected that he was capable of obtaining better grades. Further, Dr. Zappone's 2017 assessment, like the County Office of Education's assessment, showed that Student was eligible for special education under the category of specific learning disability. Dr. Zappone credibly testified that Student would have been eligible under that category during the 2015-2016 school year as well.

31. The failure of San Diego Unified to make reasonable efforts to obtain Father's informed consent to assessment led to its failure to assess Student, and led to Student's failure to receive special education and related services from San Diego Unified. As a result, San Diego Unified's procedural violation which led to its failure to assess Student impeded Student's right to FAPE, and caused a deprivation of educational benefits. The failure of San Diego Unified to assess Student also significantly impeded Father's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. The assessment proposed by San Diego Unified, had it been performed, would have provided material information to Father that would have assisted him in deciding what services Student needed to access his education. (*E.S. v. Conejo Valley Unified School Dist.* (C.D. Cal., July 27, 2018, No. CV 17-2629 SS) 2018 WL 3630297.) (*Conejo Valley.*)

32. Consequently, by failing to make reasonable efforts to obtain Father's consent to assessment, San Diego Unified failed to meet its child find obligation to assess Student, and, as a result, did not find him eligible for special education as a student with a specific learning disability. San Diego Unified thereby deprived Student of a FAPE. As is discussed below, Student is entitled to compensatory education for this deprivation of a FAPE.

33. Student also contends that due to Ms. Inskeep's diagnosis of Student with depression, combined with subsequent diagnoses by other mental health professionals of a variety of mental health deficits, including Dr. Malek's diagnosis of schizophrenia, as well as Dr. Zappone's and Ms. Malek's testimony that Student would have had schizophrenia during the 2015-2016 school year, Student would have been eligible for special education during the 2015-2016 school year under the category of emotional disturbance. However, a finding of eligibility under the category of emotional disturbance does not simply rely upon a mental health diagnosis. Rather, there are a variety of other criteria that must be met, and as explained below, Student failed to meet his burden of proof as to any of them. Most significantly, as is described in Legal Conclusion 10, above, a determination of eligibility for special education is not made in hindsight. It is based upon the information that San Diego Unified knew, or had reason to know, during the 2015-2016 school year.

34. First, as is explained in Legal Conclusion 20, eligibility under the category of emotional disturbance requires a finding that the Student exhibit one or more of several characteristics *over a long period of time, and to a marked degree, which adversely affects educational performance*. Additionally, as with all eligibility categories for special education, the student must be in need of special education and related services by reason of the disability of emotional disturbance.

35. The first criterion upon which eligibility in the category of emotional disturbance is based is an inability to learn which cannot be explained by intellectual, sensory, or health factors. There was no evidence that Student had such an inability to learn, or that any such inability had existed, during the year 2015-2016, for a long period of time, and to a marked degree, and that San Diego Unified had notice of it. Rather, Ms. Inskeep, the only mental health professional who testified who had provided services to Student at school during the 2015-2016 school year, attributed Student's

poor educational performance at Lincoln largely to a lack of attendance at school, and to a lack of support at home, and possibly to a learning disability. The second criterion is an inability to build or maintain satisfactory interpersonal relationships with peers *and* teachers. There was no evidence that he was unable to build or maintain such relationships. Student had some anger issues with some peers sometimes, but Student had a girlfriend. His history teacher was willing to assist Student. Therefore, this criterion was not applicable to Student.

36. The third criterion is inappropriate types of behaviors or feelings under normal circumstances exhibited in several situations. Student had some anger issues with Father, which, at one point, caused Student to leave the house in anger. He had also inappropriately tagged a school bathroom. He occasionally became angry with peers and argued with them. These might be considered inappropriate types of behaviors or feelings, but there was no evidence as to why Student became so angry that he left home, or why he became angry at his friends. Therefore, there was no evidence that Student's anger occurred in "normal circumstances." Nor do these behaviors appear to have existed to a marked degree, and for a long period of time, and to have adversely affected Student's educational performance. The next criterion was Student exhibiting a general pervasive mood of unhappiness or depression. Ms. Inskeep, the only witness who testified about Student's affect during the 2015-2016 school year, specifically testified that Student's depression was not present for a long period of time. She also expressed her opinion that Student's depression did not adversely affect his education. While she acknowledged the possibility that a combination of depression and a learning disability "could" affect educational performance, neither her testimony nor any other evidence demonstrated that this was the case with Student during the 2015-2016 school year. The final criterion to support an eligibility of emotional disturbance is a tendency to develop physical symptoms or fears associated with

personal or school problems. There was no evidence that Student displayed this characteristic at any time during the 2015-2016 school year.

37. Student's contention, based upon the testimony of Dr.Zappone and Dr. Malek, that Student currently suffers from schizophrenia, and did so during the 2015-2016 school year does not change this analysis. As was stated in Legal Conclusion 20, both California and federal law recognize that emotional disturbance includes schizophrenia. However, Ms. Inskeep, the only mental health professional who treated Student during the 2015-2016 school year who testified at hearing, did not diagnose him with schizophrenia. Indeed, at no time during her 12 sessions with him did he report that he had hallucinations or delusions, and at no time during her 12 sessions with him did he react to internal stimuli. Her testimony on this point is unrefuted. Furthermore, the testimony of Student's Maternal Grandmother, with whom he lived during the 2015-2016 school year, did not reflect that Student had any hallucinations or delusions until late March, 2016. This was about the time at which Student ceased attending Twain. Maternal Grandmother did not report Student's hallucinations to San Diego Unified.

38. In general, Student's experts' opinions as to Student's eligibility for special education under the category of emotional disturbance had numerous flaws. None of them had any familiarity with Student in 2015-2016. They did not couch their recommendations in terms of what San Diego Unified was required to do to provide Student a FAPE. Furthermore, all of their assessments, reports, and observations were performed after they knew the following: Student had sexually abused a family member, Student had engaged in a suicide attempt, Student had abused drugs, and Student had medical diagnoses regarding a variety of mental and emotional disorders, several of which diagnoses were based upon multiple reports of hallucinations; and at least of one of which was based upon Mother's use of alcohol when she was pregnant with Student. There was no evidence that San Diego Unified had any of this information in 2015-2016.

Indeed, Ms. Inskeep's documentation reflected that Student and his family did not report that Student had any hallucinations or delusions, or that Mother had used alcohol during pregnancy, or that Student engaged in any use of drugs beyond the slightest use of marijuana and alcohol. The documentation Father provided to Lincoln and Twain did not reflect that Student had any medical problems. Ms. Inskeep did not suspect that Student was a pupil who required special education and related services for mental health reasons during the 2015-2016 school year, and her lack of suspicion was reasonable.

39. It is noteworthy that, as a matter of course, Ms. Inskeep considered it part of her responsibilities to be aware of whether she had reason to suspect that any of the students she served in the Outpatient Program had a disability that required special education and related services and should be referred for a special education assessment. Significantly, all the students she counseled and assessed in the Outpatient Program had an Axis 1 diagnosis, but most of them were not special education students. (As was described above, special education eligibility under the category of emotional disturbance requires more than a mental health diagnosis.) If Ms. Inskeep suspected that any of these students had such a disability, she would have made the referral. Based upon the information she had at the time, Student's mental health issues, as examined by her in over 12 therapy sessions, did not rise to the level of eligibility for special education for mental health services. Unlike in *Timothy O., supra*, where a district improperly conducted an informal observation instead of a formal assessment when it had reason to suspect a child was on the autism spectrum, Ms. Inskeep did not have reason to suspect that Student had the disability of emotional disturbance and so might require special education, and therefore she did not refer him for assessment for that disability. Rather, as she came to know Student, she eventually suspected in December 2015 that he might have a learning disability that affected his education. However, the

Assessment Plan was properly devised to ascertain whether Student had any of a variety of disabilities. The social/emotional/behavior part of the assessment provided for in the Assessment Plan would provide information as to Student's mental health.

40. Student's suicide attempt occurred on June 21, 2016, just a day before the 2015-2016 school year ended on June 22, 2016. There was no evidence that San Diego Unified was notified of this suicide attempt before the end of the school year, and no evidence as to what actions San Diego Unified would have taken had it been so notified. The only issue in this case, however, as alleged in the amended complaint and discussed in two prehearing conferences, was the responsibility of San Diego Unified to Student during the 2015-2016 regular school year. Student did not offer any evidence that Ms. Inskeep, or anybody else at San Diego Unified, had a reasonable basis to suspect, during the 2015-2016 school year, that Student required special education under the eligibility category of emotional disturbance. Accordingly, San Diego Unified did not deprive Student of a FAPE on this ground.

REMEDIES²³

1. Student prevailed on the only issue heard and decided. As a remedy,

²³ In his closing brief, Student mentioned that he requested records from San Diego Unified, and that, until hearing, San Diego Unified did not produce the Referral for Assessment, the Assessment Plan, and a fax from Ms. Inskeep. He also mentioned that there were no documents regarding why Student disenrolled from Twain. Student did not allege these matters in his amended complaint, but raised them at the beginning of this hearing, at which time the ALJ ordered San Diego Unified to produce any of Student's educational records that had not been produced. Student sought no further remedy with respect to the production, nor did Student call any witnesses, such as a custodian of records, to testify at hearing regarding the records, nor has Student

Student requests that San Diego Unified provide compensatory education as follows: Nine months of placement at a residential treatment center, with mental health counseling, academic support, and speech and language services.

2. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Ibid.*) An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized analysis, just as an IEP focuses on the individual student’s needs. (*Reid v. District of Columbia*, *supra*, 401 F.3d 516, 524.) The award must be fact-specific and be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

3. Reimbursement of parents’ expenses for services they obtained for student and paid for out-of-pocket is another available remedy in an appropriate circumstance. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [1055 S.Ct. 96].) Student does not seek reimbursement in this matter, and provided no

contended that San Diego Unified committed a procedural violation which has caused harm under the analysis in Legal Conclusion 8.

evidence of any reimbursable expenses.

4. Student contends that San Diego Unified had a reasonable suspicion that he required special education and related services in June 2015, when Ms. Inskeep performed her intake procedures for the Outpatient Program in June 2015, and therefore contends that he is entitled to compensatory education for the entire school year of 2015-2016. This contention is a corollary to Student's contention that Ms. Inskeep's intake assessment should have led her to reasonably suspect that Student was eligible for special education and related services under the disability category of emotional disturbance, and that he was, in fact, so eligible. However, as is discussed above, the evidence does not support this conclusion.

5. Moreover, contrary to Student's contention, the date San Diego Unified reasonably suspected student had a disability and a need for special education is not a reasonable date from which to calculate an award of compensatory education. San Diego Unified had 60 days from the date Father would have signed an assessment plan in which to perform an assessment, and convene an IEP team meeting to determine whether Student was eligible for special education. At least one court has decided that the calculation of an award of compensatory education in a child find situation properly begins on the date when an IEP would have been due (i.e., the date district would have made a FAPE offer) had the district promptly acted on its duty to assess. (*Conejo Valley, supra*, 2018 WL 3630297.)

6. Applying this type of analysis to this case, the evidence demonstrated that on December 10, 2015, when Ms. Inskeep first suspected that Student had a learning disability and might require special education services, she consulted with Mr. Moreno, Student, Father, and Maternal Grandmother regarding assessing Student for special education. On December 14, 2015, she obtained Student's and Father's signatures on a form to obtain Student's previous assessment report from Helix, and made several

unsuccessful attempts to obtain the assessment report from Helix. The winter holidays intervened, but on January 7, 2016, she faxed the form to Helix and personally retrieved the report later in January. Mr. Moreno referred Student for a special education assessment on January 28, 2016, and shortly thereafter Ms. Klin gave the Assessment Plan to Student to obtain Father's signature. The Assessment Plan requested that the plan be returned within 15 days from January 28, 2016, which was February 12, 2016. Based upon this most optimistic of timelines, San Diego Unified would then have 60 days from February 12, 2016, or April 12, 2016, to complete its assessment of Student and hold an IEP team meeting to discuss the assessment results, determine whether Student was eligible for special education and services, and offer a FAPE. The 2015-2016 regular school year ended on June 22, 2016. There were approximately 10 weeks of school between those two dates, not excluding any school holidays or school vacations. No evidence was presented as to such events. However, since compensatory education need not be based on a one-to-one calculation, 10 weeks is a reasonable approximation of the time frame for which Student is entitled to compensatory education.

7. If, as was likely, San Diego Unified found Student eligible under the category of specific learning disability, San Diego Unified would have provided Student with specialized academic instruction. Dr. Edwards estimated that Student required 20 hours of group specialized academic instruction per week, in a group setting, but did not explain why she recommended that amount. Student's IEP's of November 2017 and January, 2018, each offered 10 hours per week of specialized academic instruction. The May 2018 IEP offered no change to that service, and offered no specific amount of specialized academic instruction upon Student's release from detention. The record reflects that Student's academic performance has been satisfactory with the 10 hours per week of specialized academic instruction that he received during the 2017-2018 school year. An award of compensatory services may track the frequency of the services

offered in a subsequent IEP. (*Conejo Valley, supra*, 2018 WL 3630297.)

8. There is no information as to what Student's placement will be on discharge. Therefore, Student's compensatory specialized academic instruction should be flexible and portable. San Diego Unified shall provide Student with a block of 100 hours (10 hours per week times 10 weeks) of specialized academic instruction from a nonpublic agency to be selected by Student's Educational Rights Holder, or Student, should he decide to hold his own educational rights in the future.

9. Student's contention that he is entitled to compensatory speech and language services from San Diego Unified is not meritorious. First, Student produced no evidence from any speech and language expert as to the type or amount of speech and language services Student would require to compensate him for any speech and language services San Diego Unified was obligated to provide and did not provide. Second, there was no evidence that Student had any unique needs in the area of speech and language during the 2015-2016 school year. Third, there was no evidence that San Diego Unified had any reason to suspect that Student had any unique needs in the area of speech and language during the 2015-2016 school year. Student has not cited any legal authority that San Diego Unified is responsible to provide compensatory education in the area of speech and language under these circumstances.

10. Student's contention that San Diego Unified should be obligated for Student's placement in a residential treatment center after he is released from detention is also unmeritorious, for several reasons. First, as was discussed above, Student did not meet his burden of proof that San Diego Unified had a reasonable suspicion that Student required special education and related services because of his mental health issues, or, more specifically, because of the disability of emotional disturbance. Second, as was also discussed above, Student did not meet his burden of proof that, had San Diego Unified assessed Student, it would have found Student eligible for special

education and related services as a Student with an emotional disturbance during the 2015-2016 school year.

11. Third, Student did not meet his burden of demonstrating that San Diego Unified would have placed Student in a residential treatment center during the 2015-2016 school year had San Diego Unified assessed him and found him eligible for special education and related services as a student with an emotional disturbance. Residential treatment is an appropriate special education placement for such a student if it is necessary to meet the student's educational needs. (*Clovis Unified School Dist. v. California OAH* (9th Cir. 1990) 903 F.2d 635, at 643.) The appropriate inquiry is whether Student's placement is necessary for educational purposes, or "whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process." (*Ibid.*) The opinions of Student's expert witnesses that Student required placement in a residential treatment center during the 2015-2016 school year were not supported by any evidence that Student required such a placement to support his educational needs. Further, the opinion of Student's experts are inimical to the special education law concepts of least restrictive environment, and continuum of placement options, discussed in Legal Conclusions 22-24. The law does not favor removing a student from a general education placement and placing him directly in a residential treatment center, which is one of the most restrictive placements on the continuum of placements. Student's experts' opinions were also contradicted by the testimony of Ms. Inskeep, who had personal experience with the placement of special education students with mental health issues, and who stated that Student was not an appropriate candidate for a residential treatment placement during the 2015-2016 school year. She also stated that it would be highly unusual to remove a child from a general education placement to a residential treatment placement. Due to her training, her experience, and her knowledge of Student, Ms. Inskeep's opinions on this issue were

more credible than those of Student's experts.

12. Finally, the opinion of Student's experts that he required placement in a residential treatment center is based solely on hindsight, and not on any knowledge these experts had about Student as of the 2015-2016 school year. As was discussed above in Legal Conclusion 10, the decisions of a school district regarding a child's special education and placement are evaluated by the facts the district knew or had reason to know at the time it made the decisions, not in hindsight.

13. For all of these reasons, Student is not entitled to reimbursement for Student's potential residential placement.

ORDER

1. San Diego Unified to provide Student a block of 100 hours of specialized academic instruction from a certified nonpublic agency selected by Student, to be used commencing within 15 days of the date of this Decision, and ending on June 6, 2020. These hours may be accessed at dates and times that are convenient to Student, the service provider, and Student's juvenile detention facility, should he remain incarcerated, including during school vacations and holidays. These services are not stay put.

2. If Student does not use any of the 100 hours of specialized academic instruction ordered herein by June 6, 2020, they will be forfeited. If any scheduled sessions do not occur due to a failure of Student to cancel them in accordance with the policy of the nonpublic agency, the time allotted to that session will be forfeited.

3. All other relief sought by Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on the only issue heard and decided in this matter.

RIGHT TO APPEAL

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

DATED: September 4, 2018

_____/s/_____

ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings