

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022050292
CASE NO. 2022010218

THE CONSOLIDATED MATTERS INVOLVING

PARENTS ON BEHALF OF STUDENT,

AND

IRVINE UNIFIED SCHOOL DISTRICT.

DECISION

OCTOBER 31, 2022

On January 10, 2022, Irvine Unified School District filed with the Office of Administrative Hearings, called OAH, a due process hearing request in OAH case number 2022010218, naming Student. On May 6, 2022, Parents on behalf of Student filed a due process hearing request, OAH case number 2022050292, naming Irvine

Unified School District. On May 10, 2022, OAH granted Student's unopposed motion to consolidate the two matters. On June 10, 2022, OAH granted the parties' request to continue the due process hearing.

Administrative Law Judge Clifford H. Woosley heard this matter in a videoconference hearing, on August 23, 24, 25, 29, 30, and 31, 2022.

Attorney Timothy A. Adams represented Student, accompanied by law clerk Andrea Blair. Parents attended on Student's behalf. Attorney Amy E. Rogers represented Irvine. Melanie Hertig, Executive Director of Special Education, and Jennifer O'Malley, Director of Special Education, attended on Irvine's behalf.

The parties agreed the matter was continued until September 26 2022, for submission of written closing briefs, at which time the briefs were filed, the record closed, and the matter submitted for decision.

ISSUES

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

Student's Issue 1 is broken into two parts but remains one issue. This Decision addresses Student's Issues in an order that aids better analysis. Otherwise, the Issues remain the same as discussed by the parties and ALJ at the prehearing conference on August 12, 2022.

STUDENT'S ISSUES

- 1A. Did Irvine fail to meet its child find obligations by not identifying Student's needs and timely assessing Student in all areas of suspected disability during the 2020-2021 school year?
- 1B. If Irvine failed to meet its child find obligations, did Irvine's child find failure deny Student a FAPE during the 2020-2021 school year?
2. Did Irvine deny Student a FAPE by failing to meet its obligations to appropriately identify Student's unique needs and timely assess Student in all areas of suspected disability during the 2020-2021 school year when it did not communicate with Student's health care providers?
3. Did Irvine deny Student a FAPE by failing to provide Student an appropriate education throughout the 2020-2021 school year?
4. Did Irvine deny Student a FAPE by failing to provide prior written notice in response to Parents' July 7, 2021 and August 6, 2021 requests regarding Irvine's assessment timeline for Student?
5. Did Irvine deny Student a FAPE by failing to complete Student's assessments within 60 days of Parents' consent to the 2021 initial assessment plan?
6. Did Irvine deny Student a FAPE by failing to find Student eligible for special education at the October 14, November 8, and December 9, 2021 IEP meetings?
7. Did Irvine deny Student a FAPE by failing to find Student eligible for special education at the May 3, 2022 IEP meeting?
8. Did Irvine deny Student a FAPE by failing to provide Student an appropriate education during the 2021-2022 school year?

IRVINE UNIFIED SCHOOL DISTRICT'S ISSUES

1. Was Irvine's October 14, 2021 multidisciplinary assessment appropriate within the meaning of Education Code section 56329(c), such that Irvine is not required to fund independent educational evaluations at public expense?
2. Was Irvine's November 10, 2021, speech and language assessment appropriate within the meaning of Education Code section 56329(c), such that Irvine is not required to fund independent educational evaluations at public expense?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to

the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this consolidated hearing each party has the burden of proving the issues raised by the complaints they filed. The factual statements included in this decision constitute the findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 16 years old at the time of hearing, attending 11th grade at Irvine's University High School. Student lived within the boundaries of Irvine Unified at all times relevant to this decision. Student prefers the use of they/them pronouns.

STUDENT'S ISSUE 1A: DID IRVINE FAIL TO MEET ITS CHILD FIND OBLIGATIONS BY NOT IDENTIFYING STUDENT'S NEEDS AND TIMELY ASSESSING STUDENT IN ALL AREAS OF SUSPECTED DISABILITY DURING THE 2020-2021 SCHOOL YEAR?

Student contended that Irvine's child find obligations were triggered early in the 2020-2021 school year. Student asserted Irvine should have assessed Student, convened an IEP team meeting, found Student eligible, and provided services and placement to enable them to access and benefit from the educational curriculum, long

before Parents' written request in late spring 2021. Student claimed that Student's educational history, multiple suicide attempts, debilitating episodes of anxiety, self-injurious behaviors, frequent absences, and diagnoses of Tourette's syndrome, obsessive compulsive disorder, anxiety, and attention deficit and hyperactivity disorder put Irvine on notice that Student was a child with suspected disability who should be assessed for special education eligibility. Student claimed Irvine's failure to meet its child find obligations denied Student a FAPE.

Irvine asserted that it properly responded to Parents' concerns by proceeding with a Section 504 review, fashioning a plan with Student's Section 504 team, and implementing the plan. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) prohibits discrimination on the basis of disability. (29 U.S.C. § 794.) Irvine stated that Student benefited from the Section 504 Plan's accommodations and Irvine was otherwise not made aware of circumstances which triggered its child find duty before Parents asked for assessment. Irvine then timely provided Parents with an assessment plan, which Parents failed to sign before the end of the school year.

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This duty is commonly referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivision (a).

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.) A school

district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Id.* at p. 1195.) Either a parent's suspicion or a district's suspicion may trigger the need for a child-find initial evaluation to determine if the student is a child with a disability within the meaning of the IDEA. (*Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, 802.)

A disability becomes "suspected," and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119-20, cert. denied, 137 S. Ct. 1578 (2017) (*Timothy O.*) A district may be put on notice through concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or by other less formal indicators, such as the child's behavior. (*Id.* at pp. 1119-1121 [citing *Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

School districts cannot rely on informal observations, or the subjective opinion of a staff member, to circumvent the district's responsibility to use the thorough and reliable procedures specified in the IDEA to assess a child in all areas of suspected disability. (*Timothy O., supra*, 822 F.3d at p. 1119.) Thus, the suspicion that a student might have an impairment affecting the student's educational performance is enough to trigger a need for assessment. (See, e.g., *Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1032 (*Park v. Anaheim*).)

Violations of a district's child find duties, 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 1190 at p.1196); *Park v. Anaheim, supra*, 464 F.3d 1025 at p. 1031.) In *Rowley*, the Court recognized the importance of adherence to the procedural

requirements of the IDEA. (*Rowley*, 458 U.S. 176 at pp. 205-06.) However, a procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in liability for denial of a FAPE only 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; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*.)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a 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, 1041).) The Ninth Circuit Court of Appeals noted in an unpublished decision that it had not yet articulated a test for determining when the child find obligation is triggered. (*G.M. ex. rel. G.M. v. Saddleback Valley Unified Sch. Dist.* (9th Cir. 2014) 583 Fed.Appx. 702, 703, fn. 1.)

To prevail on Issue 1, Student must first prove that Irvine failed to meet its child find obligations and refer Student for assessment. If successful, Student must then prove up that, if timely assessed, Student would have been found eligible for special education.

STUDENT'S 2020-2021 SCHOOL YEAR

Student and their family moved to Irvine in the summer of 2020, from Madison, Wisconsin. Student attended a Madison public school, Velma Bell Hamilton Middle School, from 2017 to 2020, for sixth through eighth grades.

When seven years old, Student had consistent tics and was diagnosed with Tourette's syndrome. As Student grew older, Student exhibited increasing obsessive-compulsive behaviors, like constant handwashing and perfectionism. Student would become highly reactive and could not calm down. Student also struggled with debilitating anxiety that kept Student from completing projects and achieving goals. In school, Student might spend three hours to complete work that should have taken a maximum of one hour. In Spring 2015, in third grade, a psychiatrist prescribed medications, which were adjusted over the years, to address Student's increasing anxiety, tics, depression, and obsessive-compulsive disorder, commonly referred to as OCD. Student effectively suppressed tics in the school environment. When 13 years old, Student began injuring themselves, including by cutting. Student made multiple suicide attempts, for which Student was hospitalized in Madison.

Mother testified credibly and persuasively regarding Student's history and needs. Mother was candid and transparent, acknowledging that she and Father were unacquainted with the services available from a public school district, like a Section 504 plan or special education. Parents relied on Irvine personnel to provide reliable information upon which Parents could make informed decisions regarding Student's public-school options and supports as Student's mental health deteriorated over the 2020-2021 school year.

On August 17, 2020, Parents completed Irvine's Aeries Online Enrollment Confirmation form and Health Condition Information form for Student. Parents reported Student's Tourette's syndrome diagnosis, OCD, and anxiety. Student was taking two medications, one for OCD and tics, and the other for anxiety.

Student started ninth grade at University High School on August 20, 2020. University had about 2,200 students on a comprehensive high school campus. Irvine was on a COVID-19 adjusted schedule. The 2020-2021 school year began with all students attending virtually. In October 2020, the schedule moved to a hybrid block schedule. Students were on University's campus two days a week and virtually attended the remainder of the week. This meant that students attended each class in person, once a week. The classes typically had about 30 students in the classroom.

A little more than two weeks after school commenced, Mother emailed Student's high school counselor, Jamie Adams, on September 8, 2020. Adams had assisted Parents in registering Student for their classes. Mother stated, "We have not obtained an IEP for [Student] but [Student] has Tourette's and OCD." Mother explained that the school stress was exacerbating Student's OCD, making it difficult to complete assignments, especially in French.

Adams responded to Mother's September 8, 2020 email the next day. Adams asked Mother for more information on how the Tourette's and OCD impacted Student in past schooling and whether Student's present struggles were typical of previous episodes. Mother responded that OCD had impacted Student's schooling in the past. The OCD was aggravated by stress, which fluctuated day to day and class to class.

Adams brought her concerns about Student's social/emotional issues to the attention of school psychologist, Nathan O'Leary, in September 2020. O'Leary scheduled a meeting with Parents to get more information about Student's issues. O'Leary, Adams, Parents and, possibly, an assistant principal, attended a virtual meeting in late September 2020. O'Leary testified at the hearing. He had little independent recollection of the meeting and substantially relied on his meeting notes. For example, he could not recall if they talked about Student's past suicide attempts or an IEP; the notes showed that both were discussed.

At the meeting, Parents shared that Student made three suicide attempts over the past summer, was under the care of a psychiatrist and therapist, and was on medication. O'Leary and Adams did not ask for the identity of, or seek a release for, Student's psychiatrist or therapist. O'Leary told Parents that IEP's were for special education, which generally included students who could not manage the general education setting. He told Parents that special education did not seem appropriate for Student and would not be the least restrictive environment. O'Leary told Parents that the Section 504 process was for students with disabilities less severe than students with IEP's.

Parents completed Irvine's Section 504 Referral Form, stating that Student had very high stress that increased anxiety and exacerbated Student's OCD, impairing their academic performance, especially on tests and high value assignments. Student was susceptible to depression. Parents stated that Student was actively cutting themselves, to temporarily relieve stress. Student's teachers completed Section 504 Teacher Input

forms. At the time, University was moving from the fully virtual teaching model to the hybrid block schedule. Therefore, the teachers had not personally seen Student in an on-campus classroom setting except for, if at all, one or two times.

Student's academic grades were A's, a B, and a C at the end of the first quarter, on October 26, 2020. On October 28, 2020, Irvine convened Student's initial virtual Section 504 meeting. School psychologist O'Leary, counselor Adams, four of Student's five teachers, and assistant principal Kris Kough attended, with Parents. The team found Student had two impairments: anxiety, which affected the major life activity of concentration, and OCD, which affected Student's ability to complete work. The team found Student eligible and fashioned a Section 504 support plan with four accommodations: extra time to turn in homework, extra time on tests and assessments, assistance chunking assignment and clarifying directions, and the option to type rather than handwrite assignments.

Math teacher Mosey and English teacher Miyadi participated in the initial Section 504 meeting and testified at the hearing. They confirmed that teachers were not informed that Student had suicidal ideations, three suicide attempts the summer before, a history of self-injurious behaviors to cope with stress and was actively cutting herself. Miyadi implemented the 504 accommodations, but Student's performance soon declined. Student was overwhelmed and stressed and had many absences. Student received grades of a C, D's, and F's on the second quarter progress report. Student did not timely, or failed to, submit assignments. Miyadi contacted Parents because of the observed stress and anxiety. Miyadi said it would have been helpful to know about Student's suicide attempts and active cutting.

On November 14, 2020, Father informed Adams and O’Leary by email that Student had not engaged in school for the previous few weeks, because of an inability to focus, stress over being so far behind at school, stomachache, and headaches. Father also told Adams that a new psychiatrist had recently assessed Student, diagnosed Student with ADHD, and said Student also demonstrated signs of bipolar disorder. Parents offered to provide a copy of the psychiatrist’s report. Student’s medication regimen was changed. Adams confirmed Student’s grades were four D’s and an F, with 25 missing assignments.

Miyadi and other teachers regularly communicated with Student as Student eventually submitted sufficient assignments to get their grades back up by semester’s end on January 14, 2021. Miyadi continued to be concerned about Student’s emotional fragility and absences.

IRVINE’S CHILD FIND DUTY WAS TRIGGERED NO LATER THAN NOVEMBER 16, 2020

Student’s significant and well-documented mental and emotional struggles in school from September 2020 onward should have put Irvine on notice that Student had, or might have, a disability requiring special education, triggering Irvine’s child find obligation to assess Student. Instead of recognizing unmistakable signs of a potential disability, Irvine focused on getting Student to perform academically. Irvine’s offers of Section 504 accommodations addressed symptoms – Student’s inability to timely complete assignments and tests, due to her OCD and anxiety. Irvine diminished the signs of systemic mental health issues that required assessment.

As of the September 2020 meeting of O'Leary, Adams, and Parents, Irvine was aware of

- Student's diagnoses,
- various prescriptions for OCD, depression and anxiety,
- suicidal ideation, and
- three suicide attempts over the previous summer.

Mother told Adams that the dysregulation cycle of stress, which elevated Student's OCD and caused Student to fall behind in assignments, was a cycle that significantly impacted Student's past schooling. In other words, Student's mental health struggles predated moving to Irvine and attending University. O'Leary's explanation unmistakably implied that Parents' choice was either an IEP assessment or a Section 504. A special education assessment referral would have been appropriate at the time of the meeting.

The October 28, 2020, initial Section 504 meeting further demonstrated Irvine's failure to properly and transparently seek, share, and consider information about Student's mental and emotional health. Four teachers referred to Student's anxiety or stress, which caused Student to be unsure of and late in completing assignments. One teacher observed scratches on Student's arm and was concerned because she had been unable to determine what was going on. The Section 504 team meeting was an opportunity to garner information from all resources and have robust dialogue with the teachers regarding Student's emotional health and struggles. But the teachers were inexplicably not informed of crucial information, leaving them less equipped to address and evaluate Student's needs. Any one of the teachers were capable and empowered to refer Student for special education assessment (Ed. Code §§ 56302, 56321(a); 5 C.C.R. § 3021).

Father's Saturday, November 14, 2020 email definitively triggered Irvine's child find duty to refer Student for assessment, when Adams and O'Leary read the email on Monday, November 16, 2020. Student had disengaged from school because of

- anxiety,
- an inability to focus,
- stress over being very behind at school,
- stomachache, and
- headaches.

A new psychiatrist had assessed Student, diagnosed Student with ADHD, found Student demonstrating signs of bipolar disorder, and put Student on a new regimen of medication. Adams confirmed Student had not been attending classes and had dozens of missing assignments; their grades had plummeted.

The threshold for suspecting that a child has a disability is relatively low. (*Dept. of Education, State of Hawaii v. Cari Rae S., supra*, at p. 1195.) Here, Irvine's child find obligation was triggered no later than November 16, 2020, when Irvine received the additional information provided by Father in his email.

STUDENT'S ISSUE 6: DID IRVINE DENY STUDENT A FAPE BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AT STUDENT'S OCTOBER 14, NOVEMBER 8, AND DECEMBER 9, 2021 IEP MEETINGS?

Irvine ultimately assessed Student and considered Student's eligibility for special education in fall 2021, after Student had been hospitalized following another suicide attempt, and placed by Parents in two residential treatment centers. Student contends

that Irvine denied Student a FAPE by not finding Student eligible for special education at Student's IEP team meetings held October 14, November 8, and December 9, 2021, following Irvine's October 2021 multidisciplinary assessment of Student. Irvine asserted that its multidisciplinary assessment properly determined that Student did not meet eligibility criteria and that Irvine correctly found Student not eligible for special education.

To determine a student's eligibility for special education, school districts assess the student to collect data for an IEP team to consider in determining eligibility. (20 U.S.C. § 1414(a); Ed. Code, § 56320.) When a school district assesses a child, the IDEA requires the school district to assess for all suspected disabilities. (*Park v. Anaheim, supra*, 464 F.3d at pp. 1031-1033.) Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs must be conducted, by qualified persons in accordance with testing requirements set forth in Education Code section 56320 subdivisions (a) through (i). (Ed. Code, §§ 56320 & 56322.)

A district assessment must be conducted in a way that:

1. uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;
2. does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and
3. uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

A district assessment must be:

1. selected and administered so as not to be discriminatory on a racial or cultural basis;
2. provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
3. used for purposes for which the assessments are valid and reliable;
4. administered by trained and knowledgeable personnel; and
5. administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

The assessor must produce a written report of each assessment, which must state whether the student may need special education and related services, and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

After assessments and other evaluation measures have produced the evaluation data needed to determine eligibility, a group of qualified professionals and the parents, generally constituting an IEP team, uses the data to determine the student's eligibility. (Ed. Code, § 56330; 34 C.F.R. § 300.306(c)(1).)

STUDENT'S INCREASING MENTAL HEALTH ISSUES DURING SECOND SEMESTER, 2020-2021 SCHOOL YEAR

Student was excessively absent during the second semester of ninth grade that began in mid-January 2021. Student simply was not present to participate in classes, receive and complete assignments, and take quizzes and tests. Student became deeply depressed, doubted they were capable of doing the schoolwork, refused to get out of bed, did not properly bathe, and would not regularly attend school. Student's grades for the third quarter of ninth grade ending March 29, 2021 were four F's and a C.

On March 26, 2021, Student was admitted to Children's Hospital of Orange County following another suicide attempt. Because of concerns Student might make further suicide attempts, Student was transferred to Evolve Aura residential treatment center in Tarzana, California, on March 31, 2021. Evolve was not a nonpublic school and focused on mental health care for its residential patients. Evolve provided solution-focused, evidence-based treatment for adolescents, 12 to 17 years old, who had suicidal ideation, anxiety, bipolar disorder, OCD behaviors, depression, and other mental health issues.

When Student arrived at Evolve, her primary therapist, Katherine Bergerson, conducted a biopsychosocial assessment of Student. Bergerson's assessment included a history of Student's multiple suicide attempts, self-harm, and active suicidal thoughts, and evaluated Student's suicidal ideation and risk. Throughout the session, Student appeared impulsive, needed a distress tolerance toy, and excessively shook her legs up and down. Student said they had difficulty expressing emotion and that, when Student smiled, their smile was fake. Student told Bergerson they had not been attending school online for three to four months because they were depressed and did not have

the motivation. Student said they had been missing school since fourth grade. When asked about her grades, Student said "Horrible. I used to be a straight A student, even when I was missing school. I am totally freaked out."

Bergerson preliminarily diagnosed Student as having:

- major depressive disorder, single episode;
- severe generalized anxiety disorder; ADHD – combined presentation;
- OCD; and
- Tourette's disorder.

Bergerson concluded that Student would benefit from a highly structured environment with 24/7 supervision to ensure Student's safety because of impulsive suicide attempts and self-harm.

Student received some assignments from her University teachers while at Evolve, but her academic involvement was sporadic. Evolve focused on Student's mental health. Student had dialectical behavior therapy for coping skills, individual therapy, group therapy, and family therapy. Student made some progress at Evolve, becoming better at communicating their feelings.

Evolve was not a long-term residential care facility and discharged most clients in 30 to 60 days. Preparing for Student's discharge in May, 2021, Evolve did not want to discharge Student back into their home/school environment, because of continuing concerns for their safety. Student continued to be emotionally dysregulated, anxious, depressed, and suicidal. Evolve recommended that Parent's find a long-term residential facility for Student's education and mental health treatment.

On May 19, 2021, Evolve discharged Student, who was taken directly to Alpine Academy, a licensed residential treatment center located in Mountain View, Utah. Alpine was a nonpublic school, certified by various state educational agencies, including the California Department of Education. Parents chose Alpine because they believed its therapeutic and educational program was well-suited to address Student's mental health profile and educational needs.

At Evolve's recommendation, Parents asked Irvine to assess Student for an IEP, on May 7, 2021, and O'Leary sent Parents a proposed special education assessment plan, later the same day. Parents did not sign and return the Assessment Plan to Irvine until June 10, 2021, after the school year ended on June 4, 2021. Parents readily admitted they were in a family crisis mode, consumed with finding and properly placing Student in an appropriate facility after Evolve, and failed to sign and return the plan earlier.

RESIDENTIAL TREATMENT AT ALPINE ACADEMY

Alpine Academy primarily served special education students with an eligibility of emotional disturbance, with internalizing symptoms and minor externalizing symptoms. Alpine offered two programs separated by gender – one for males, which was on a separate campus located in another town, and the other for females, which Student attended and is discussed here. Alpine's educational program served grades seven through 12, with a total high school enrollment of about 40 students.

Alpine provided a family environment for students by implementing the nationally certified teaching-family model program, which used a clinical, therapeutic, and residential approach to replicate a student's family, school, and community life. The

facility used no restraints and were a hands-off facility, unless a student was in danger. The school counselor tracked students' academic progress based on their home state and district requirements. Irvine had placed other students at Alpine.

Alpine's school was year round, split into four quarters. Students typically remained at Alpine for 12 months. The maximum student occupancy per class was eight to 10. There was one staff member for every four students. Staff members completed training to support students of all

- religious,
- racial,
- ethnic,
- cultural,
- sexual, and
- gender identity backgrounds.

Alpine had seven residential homes on campus, each with seven to 10 students. The residences had specially trained family teachers, typically a couple, who had separate living quarters in the residences. Within the residences, students were expected to keep their spaces clean, clothes laundered, and do household chores. There were regular family residence meetings where the family teachers and students resolved issues, clarified responsibilities, and generally assured healthy relations based on open exchanges. The family teachers monitored conflicts and addressed students' struggles, within the context of group and individual interactions, mindful of each student's treatment plan.

IRVINE'S OCTOBER 14, 2021 MULTIDISCIPLINARY ASSESSMENT

Irvine commenced its assessment of Student in September 2021 and produced a written Multidisciplinary Assessment Report dated October 14, 2021, with some revisions on October 18, 2021. School psychologist, Dr. Angela Weedn, led the assessment team. Dr. Weedn had a bachelor's degree in communications from University of Southern California, a master's degree in general education from Loyola Marymount University, and master's and doctorate degrees in educational psychology from Alliant International University. She held a pupil personnel credential. Dr. Weedn had been a school psychologist with Irvine for 15 years and, for the previous six years, was a lead psychologist. She had conducted hundreds of assessments, IEP team meetings, Section 504 meetings, and student study team meetings. For about a year, her primary duty was assessing students who were already in residential treatment centers and nonpublic schools. Dr. Weedn's education, credentials, and experience qualified her to administer standardized tests and conduct Student's assessment.

Irvine's assessment team included education specialist Jennifer Hill, who evaluated Student's academic achievement and post-secondary transition. Beth Haile was a specialist who conducted an Educationally Related Mental Health Services evaluation, commonly called an ERMHS. Dr. Weedn assessed Student's intellectual development and, along with input from Haile, evaluated Student's social emotional status and needs. Nurse Roberta Moradi provided a health summary. Dr. Weedn and Haile traveled to Utah to complete their assessments.

Dr. Weedn first communicated with Parents in August 2021 and obtained necessary releases of information on September 3, 2021, enabling her to communicate with Alpine. She talked to school psychologist O'Leary. She reviewed all records in Irvine's possession, regarding academics, Section 504, health, nursing, and discipline.

IRVINE'S REVIEW OF STUDENT'S RECORDS

Dr. Weedn summarized Student's diagnostic history for the report. The nurse's report also noted that Dr. Shawn Kohler diagnosed Student with a borderline personality trait in September 2021. Dr. Weedn enumerated Student's daily prescription medications for anxiety, major depressive disorder, reactivity, tics, and ADHD. The nurse reported that Student had an Albuterol inhaler, used as needed. Dr. Weedn stated that the Irvine assessment team also reviewed all available records regarding Student's academic and mental health history.

TEACHER INPUT

Student's grades at Alpine for the fourth quarter of 2020-2021 were all A's, and a B. Student got all A's for the first quarter of 2021-2022. Dr. Weedn had Student's five Alpine academic teachers complete a teacher performance form, which was not a standardized instrument and was informational. The teachers generally rated Student's class performance as outstanding, with some ratings of satisfactory and needs improvement in the areas of impulse control and cooperation with teacher. The lowest ratings were for Student's relationship with peers, with two teachers saying Student needed improvement.

Student's strengths were their desire to do their best, and their intelligence, attentiveness, and respectfulness. Areas of concern were Student's

- stress about grades,
- perfectionism,
- anxiety,
- impatience with peers when in a group,
- lack of self-confidence, and
- lack of a strong core of good friends.

Two teachers commented Student preferred to work alone, was socially awkward, and connected to adults easier than with peers. Student's English teacher said Student was doing well in class and was caught up on their assignments, but tried too hard to be perfect, which caused a lot of stress. Student did not trust their own judgment, engaged in "black and white" thinking, and had a difficult time moving forward when relying on their own judgment. Student got along with peers but could be overbearing.

Dr. Weedn observed Student in the class and reported that Student responded well to the teaching and interactions, used coping skills, and took a leadership role. She thought that Student had age-appropriate socialization and interactions with peers.

Dr. Weedn included information from Student's University teachers, primarily by summarizing the Section 504 Teacher Reports completed for the October 2020 Section 504 meeting. Dr. Weedn talked to two of the University teachers in October 2021. English teacher Miyadi said Student was above grade level and highly proficient, but was often absent due to mental health concerns, did not have strong relationships with classmates, and was emotionally fragile.

PARENTS' INTERVIEW

Weedn and Haile interviewed Parents, who reported significant concerns about Student's behavior and temperament in the areas of low self-esteem and suicidal ideation. They worried about Student's:

- impulsivity,
- difficulty concentrating,
- hyperactivity,
- worrying,
- stomach aches,
- poor attendance,
- self-harm,
- disobedience, and
- argumentativeness.

Mother was concerned with Student's hatred for self, self-harm, inability to deal with conflict, and lack of self-acceptance, resilience, and emotional regulation, which impaired their ability to handle stress. Student misinterpreted others' actions and words, which impaired strong friendships. During the toddler years, Student demonstrated a strong desire to control their environment. This continued and had caused significant difficulty with peers, creating conflict. Student had a history of beginning an academic year strong but finishing badly.

Student had been psychiatrically hospitalized on four occasions. Three were in Wisconsin. Each hospitalization was approximately a week in duration. Parents described Student's placement and program at Evolve. Parents told Haile that Student might say they do not like Alpine, but Parents were seeing progress.

STUDENT'S INTERVIEWS

Dr. Weedn interviewed Student. Student struggled with their feelings of self-hate, making progress in that area at Evolve and more so at Alpine. Yet, despite medications, Student's emotions and moods fluctuated frequently. Student acknowledged that they struggled with mental health issues prior to moving to California. Student said the frequent absences in ninth grade at University were caused by lack of motivation. Student admitted starting to miss school in third and fourth grade. That was when Student began to feel they were not good enough and worries about school emerged. Student said they had facial, verbal, and movement tics throughout the day, although on good days, the tics might be absent for a few hours. Student claimed to have had two cutting incidents and three suicide attempts since starting at Alpine. Dr. Weedn did not see tics in the interview.

ERMHS specialist Haile also interviewed Student. Haile was qualified to conduct Student's ERMHS assessment. She had a bachelor's degree in psychology and a master's in social work, and possessed a pupil personnel services credential in school social work. As an ERMHS specialist, Haile

- provided individual, group, and family counseling per students' IEP's,
- monitored IEP goals progress,
- conducted suicide risk assessments,
- attended IEP team meetings, and
- conducted ERMHS assessments.

With Haile, Student said "I have been feeling depressed my whole life." Student described their mood as irritable, angry, depressed, and anxious on a daily basis. Student continued to have intrusive thoughts about suicide, self-harm, and running

away. Student admitted they had difficulty maintaining friendships. Haile observed Student with motor tics during the first section of the interview but did not observe tics after Student returned from lunch.

INTERVIEWS WITH ALPINE THERAPISTS AND FAMILY TEACHER

ERMHS specialist Haile interviewed Student's primary therapist Chris Horsfall. Horsfall had weekly 75-minute individual sessions with Student, weekly 25-minute family sessions with Student and Parents, and group therapy 90 minutes a week, where Student and their peers practiced developing skills amongst themselves. He found that Student's traits were consistent with a diagnosis of Borderline Personality Disorder. Though Student developed good coping skills, Student chose not to use the skills. Student put little effort into therapeutic homework assignments and struggled to work towards short term goals.

Academically, Student earned excellent grades but struggled with a lot of anxiety, related to perfectionist tendencies. Horsfall said that Student was good at compartmentalizing when attending class. Student valued being a good student and was good at distracting themselves during school. However, Student's fears – imagined and real – negatively impacted Student's school attendance and performance, causing somatic complaints, anxiety symptoms, and school absence. Horsfall noted that Student long had a pattern of engaging in these behaviors to avoid school, which became more pronounced over time.

Dr. Weedn interviewed Student's Alpine family teacher, Marlena Thompson, on September 20, 2021. The residences were very structured with personal duties, general chores, and dinners together. The inability to individually control their environment was difficult for Student. Student was working on disagreeing more appropriately within the

residence. Student struggled accepting difference in other people. Student emotionally escalated over small things. Student expressed fears of reverting back to old patterns.

ACADEMIC AND COGNITIVE ASSESSMENTS

Dr. Weedn assessed Student's academic and cognitive abilities. The academic results were interpreted by specialist Hill. During testing, Student had a difficult time moving to each new task, was at ease, and frequently asked questions regarding how they were doing. Student noticeably increased their level of effort for difficult tasks, becoming much slower and more careful.

On the Woodcock Johnson IV Tests of Academic Achievement's test composites, Student demonstrated strong academic skills across all domains. On the Woodcock Johnson IV Tests of Cognitive Abilities, Student's overall intellectual ability was in the very superior range compared to others their age, with a general intellectual ability standard score of 141. There were no areas of identified weaknesses among Student's processing abilities.

BEHAVIOR, SOCIAL, AND EMOTIONAL FUNCTIONING

Dr. Weedn collected ratings questionnaires on a number of social-emotional assessment instruments to evaluate Student's social-emotional behaviors, review their mental health status, and assess for attention deficits. Mother and three of Student's Alpine teachers completed questionnaires from the Behavior Assessment System for Children, 3rd Edition, commonly called the BASC. Mother rated Student clinically significant with concerns for

- hyperactivity,
- anxiety,

- depression,
- somatization,
- the internalizing problems composite,
- the behavior symptoms index, and
- adaptability.

Two teachers rated Student clinically significant or at-risk for anxiety and depression, while one teacher rated Student at-risk for atypicality, adaptability, internalizing problems. Overall, teachers were generally in the average range while Mother was in the at-risk or clinically significant range.

On the Multidimensional Anxiety Scale for Children, 2nd Edition, Student and Mother rated anxiety as very elevated, having more anxious feeling or thoughts than their peers, which were consistent with Student's diagnosis of anxiety. On the Children's Depression Inventory, 2nd Edition, Mother and Student rated Student's overall depressive symptoms and functional problems as very elevated; the teachers rated Student as average. On the self-report, Student rated themselves as very elevated for

- negative mood,
- physical symptoms,
- negative self-esteem,
- ineffectiveness, and
- interpersonal problems.

Dr. Weedn administered the Conners, 3rd Edition, to evaluate Student's attention deficits and hyperactivity. Generally, Mother and Student ratings indicated that ADHD was strongly indicated while teacher responses indicated highly unlikely. On the Comprehensive Executive Functioning Inventories, teacher ratings were within normal

limits with the exception of one, who rated emotional regulation to be an area of weakness for Student. Student's responses demonstrated their significant challenges with emotional regulation and identified inhibitory control as an area of weakness. Student believed their executive functioning was most impacted when emotionally dysregulated.

EDUCATIONALLY RELATED MENTAL HEALTH SERVICES EVALUATION

ERMHS specialist Haile administered The Million Adolescent Clinical Inventory, 2nd Edition, which was developed specifically for teens and adolescents to assess mental health and behavior concerns often unique to their age group. Student's performance on the adolescent clinical inventory indicated significant disappointments in interpersonal relationships and a tendency to create self-defeating vicious cycles related to peer relationships. Student's unpredictability, edgy moodiness, and negativism adversely effected their ability to develop and sustain healthy relationships. Student felt it best to maintain a safe distance from others because close connections eventually ended in disappointment. When Student was in class, Student would emotionally disconnect. Student saw class as a safe place, but the emotional disconnect was stressful.

Haile found Student to be almost irredeemably pessimistic and disillusioned about life. Although able to function on a day-to-day basis, Student experienced periods of marked behavioral, cognitive, and affective dysregulation, creating self-defeating cycles. Student's immature, uncertain, and wavering sense of self and identity, with an inconstant and unstable nature of behaving, thinking, and feeling, indicated Student's lack of inner cohesion which made Student vulnerable to becoming distraught

and overwhelmed. These erratic emotions were intrinsically distressing, put others on edge, and disrupted Student's capacity to cope effectively with daily, ordinary demands. Pervasive instability and ambivalence continually intruded into Student's everyday life.

To collect additional data on possible pathological personality traits, Haile had Student complete the Personality Inventory for DSM 5. Haile found that Student's persistent emotional dysregulation, poor coping skills and high levels of impulsivity made suicidal ideation and suicidal gestures areas of significant concern for Student.

IRVINE'S SPECIAL EDUCATION ELIGIBILITY ANALYSIS AND INITIAL IEP TEAM MEETINGS

Federal and state law provided that only children who met specific eligibility criteria were entitled to special education and related service. (20 U.S.C. § 1401(3)(A); Ed. Code, § 56026(a).) To be eligible, the child must be deemed "a child with a disability" and, by reason thereof, require special instruction, services, or both, which cannot be provided without modification of the general education program. (20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a); (Ed. Code § 56026, subd. (b); 5 C.C.R. § 3030(a).)

Irvine's assessment report summarized the multidisciplinary assessment's findings and analyzed whether Student met the special education eligibility criteria for emotional disturbance, other health impairment, and specific learning disability. Dr. Weedn concluded Student met none of the eligibility criteria and, therefore, was not eligible for special education.

Irvine convened Student's initial IEP team meeting on October 14, 2021. All required team members were present, including Parents and advocacy specialist Patricia McGehee. Dr. Weedn and Haile presented the results of Irvine's multidisciplinary

assessment. Mother indicated there were some inaccuracies in the assessment report, and Dr. Weedn said she would update the report. Due to time constraints, the meeting ended before Dr. Weedn and Haile fully presented the assessment report.

Irvine convened part two of the initial IEP team meeting on November 8, 2021. Dr. Weedn and Haile completed presenting the assessment report and the eligibility analysis. The Irvine IEP team members agreed with Dr. Weedn's analysis and recommendations that Student did not meet eligibility criteria. Parents' advocate disagreed with Irvine's assessment and eligibility decision, saying Parents would be requesting an independent education evaluation.

Irvine proposed a speech assessment to Mother, explaining the assessment team felt the need to assess in the area of pragmatics. The IEP team again met on December 9, 2021, to review the speech and language assessment. Student did not meet speech and language impairment eligibility criteria. Irvine concluded that Student did not qualify for special education services under any suspected area of disability.

IRVINE'S MULTIDISCIPLINARY ASSESSMENT REPORT DEMONSTRATED STUDENT WAS ELIGIBLE FOR SPECIAL EDUCATION

Student asserted that the data in Irvine's October 2021 assessment report established Student was eligible for special education under the criteria for emotional disturbance and other health impairment. Irvine claimed its assessment and the Irvine IEP team members correctly found Student not eligible.

A school district is required to broadly construe a student's educational needs as including their social, health, emotional, behavior, communicative, physical and vocational needs, in addition to their academic needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1501, abrogated in part on other grounds by *Schaffer v. Weast, supra*, 526 U.S. 49, 56-58.) The educational benefit to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

Here, data and information gathered in Irvine's multidisciplinary assessment report demonstrated that Student met the eligibility criteria for emotional disturbance and other health impairment. Irvine's eligibility analysis overly relied upon and narrowly construed Alpine teacher reports, and grossly misinterpreted information from Student's University teachers. The assessment team's eligibility analysis minimized or dismissed interviews and scale results from Mother and Student, which documented Student's inability to have healthy relationships with peers and Student's cycles of dysregulation, which undermined Student's ability to fully engage with school. The data showed Student's OCD and perfectionism caused Student to question their capabilities, beginning a familiar sequence of

- self-deprecation,
- feelings of not being good enough,
- stress, anxiety,
- depression,
- delay in completing assignments,

- missing assignments, and
- eventual non-attendance.

These cycles of dysregulation, which occurred before Student came to Irvine, contributed to patterns of self-harm and impulsive suicidal ideation.

EMOTIONAL DISTURBANCE ELIGIBILITY

For emotional disturbance eligibility, Student needed to exhibit one or more of five characteristics, over a long period of time and to a marked degree, that adversely affected Student's educational performance. (34 C.F.R. Sec. 300.8(c)(4); 5 C.C.R. Sec. 3030(b)(4).) Student exhibited all five.

The first characteristic was an inability to learn that could not be explained by intellectual, sensory, or health factors. With no analysis, Irvine concluded that Student excelled academically and did not demonstrate an inability to learn, apparently influenced by Student's high intelligence quotient and good grades. However, Student did not learn at University when Student dysregulated, failed to do assignments, did not take tests, and refused to attend school, for the months preceding their March 2021 hospitalization. An empty chair in a classroom, or in front of Zoom screen, did not learn. Student's grades plummeted. At Alpine, Student attended classes and received good grades. However, for more than four months, Student was

- in a completely controlled environment,
- receiving weekly individual, group, and family therapy,
- taking a host of medications to address diagnostic symptoms,
- having one trained staff member for every four students,
- in classes composed of eight students,

- living in a residential household with trained teachers,
- participating in required sessions to address conflicts, and
- partaking of a rewards system based on Student's use of their coping skills.

ERMHS specialist Haile found that Student experienced periods of marked behavioral, cognitive, and affective dysregulation, creating self-defeating cycles. Student's therapist Horsfall said that Student was not using the coping skills. None of Student's doctors, therapists, or service providers suggested that Student could exercise the skills to avoid cycles of dysfunctional dysregulation without consistent and focused therapeutic support in an appropriate environment. Student exhibited this characteristic over a long period of time, well before Student came to Irvine, as evidenced by Parents' and Student's history of Student's mental health and academics reports. Student's cycles of dysregulation were also to a marked degree, intense enough to where Student could not academically perform.

The second characteristic was an inability to build or maintain satisfactory interpersonal relationships with peers and teachers. Irvine's report found that information gathered from Parents, teachers, observation, and rating scales indicated that Student had the skills necessary for successful social interaction, but Student was inhibited by personality factors, which appeared to be specific to peers. Then, inexplicably, Dr. Weedn found that Student did not meet this characteristic. Federal and state definitions did not limit "peers" to those in Student's classroom. On the comprehensive high school campus, peers included University high schoolers. At Alpine, peers included the students that attended the school. None of Student's University or Alpine teachers said Student had a friend. Though Student could be respectful in class, Student had disputes with peers, as documented in Alpine's

Treatment Review Monthly Summary Reports. Student exhibited this second characteristic, over a long period of time, well before Student came to Irvine, as evidenced by Parents' and Student's history of Student's mental health struggles. Student's inability to build and maintain peer relationships effected Student's peer relationships in the classroom, on the campus, in their residence, and was intense.

The third characteristic was inappropriate types of behavior or feelings under normal circumstances. Dr. Weedn found Student to have this characteristic for a long period of time, but concluded it was mostly limited to the home setting and, therefore, not to a marked degree. Dr. Weedn's description of Student's struggles markedly differed from those described by ERMHS specialist Haile. Dr. Weedn found no clear evidence that Student's inappropriate types of behaviors or feelings occurred in the school setting, referring to the Alpine teacher scale responses and anecdotal information.

With respect to eligibility under characteristic three, the focus is on the student's ability to control the behavior and to act pursuant to socially acceptable norms. (Interpretative Letter (OSEP August 11, 1989), 213 IDELR 247.) Here, Student's frequent fluctuating and often contrasting thoughts and perceptions in relation to passing events, others' comments and actions, and to themselves, occurred in any setting. To constrain their anger and disappointment and protect against further losses, Student attempted to fully conceal their discontent and oppositional urges, but often unsuccessfully. Student's perceptions of inadequacy, aggravated by the OCD, increased the stress and anxiety that prevented Student from doing assignments and attending class. These inappropriate feelings and behaviors directly affected Student's school performance. At Alpine, Student's high levels of irritability and mood dysregulation

created conflicts with other Alpine students. Student exhibited inappropriate behavior and feelings, under normal circumstances, over a long period of time, and to a marked degree.

The fourth characteristic was a general pervasive mood of unhappiness or depression. Irvine found that data from Student and Parent established Student's depression was in the home setting. Irvine found that teacher ratings and Dr. Weedn's observations did not indicate that Student presented a pervasive mood of unhappiness or depression in the school setting. Irvine's conclusions minimized Student's major depressive disorder diagnosis and Student's constant internal emotional conflicts. Haile found that tension, recurrent anxieties, and a general mood of disharmony, typified Student's inner life. Student harbored intense angry feelings that intermittently broke through Student's façade. Haile's assessment concluded that Student was almost irredeemably pessimistic and disillusioned about life. Though Student was often able to constrain this anger and depression in a classroom, Student exhibited these characteristics in interactions with other students, responses to Alpine rules and regulations, and misinterpretations of others' words and intents. The educational benefit to be provided to a child requiring special education was not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego, supra*, 93 F.3d at 1467.) Student exhibited the fourth characteristic of a general pervasive mood of unhappiness or depression, over a long period of time and to a marked degree, that affected educational performance.

The fifth characteristic was a tendency to develop physical symptoms or fears associated with personal or school problems. Dr. Weedn found that Student had this characteristic as to anxiety symptoms for a long period of time, but that Student did not exhibit the characteristic to a marked degree.

The IDEA and Education Code, and their implementing regulations, do not define "to a marked degree." The Office of Special Education Programs has taken the position that "to a marked degree" generally refers to the frequency, duration or intensity of a student's emotionally disturbed behavior in comparison to the behavior of peers and can be indicative of either degree of acuity or pervasiveness. (Letter to Anonymous, (OSEP 1989), 213 IDELR 247.)

Irvine concluded that Student demonstrated these anxiety tendencies in the home but there was no clear evidence of overt or acute anxiety in the school setting. Yet, University teachers observed Student's anxiety in the class setting, which effected academic performance and relationships. Alpine's therapeutic plan included teaching Student coping mechanisms, such as with dialectical behavior therapy, to prevent the destructive, anxiety-driven dysregulation cycles from beginning. The evidence indicated that Student's months-long immersion in Alpine's therapeutic environment, which included residence, school, and recreation, helped control the anxiety and dysregulation. But the evidence also indicated that Student did not have, or was unable to employ, the skills to control the anxiety and dysregulation from reoccurring or taking control without therapeutic support in an appropriate environment. The assessment data and

information confirmed that Student exhibited a tendency to develop symptoms or fears “associated with personal or school problems,” for many years. Student exhibited the fifth characteristic over a long period of time and to a marked degree.

OTHER HEALTH IMPAIRMENT ELIGIBILITY

Irvine concluded that Student did not meet the eligibility criteria for other health impairment. Citing to the Alpine teachers’ rating scales and anecdotal information from University teachers, Irvine concluded that Student’s attention in the classroom was appropriate and did not demonstrate limited alertness in the classroom setting. Yet, at the October 2020 Section 504 meeting, Irvine found Student to have two impairments, anxiety and OCD, which affected the major life activities of concentration and Student’s ability to complete work. These findings were largely based upon reports from the University teachers. Student was then diagnosed with ADHD, a chronic and qualifying condition under IDEA. (34 C.F.R. § 300.8(c)(9)(i).) The Section 504 accommodations proved unsuccessful, as Student fell farther behind academically, as part of the dysregulation that led to nonattendance, failing grades, hospitalization and placement in a residential treatment center.

Dr. Weedn also concluded that there was no evidence to indicate that Student “displayed limited vitality in the school setting” which was not the legal standard. The standard is “limited vitality.” Therefore, Alpine teachers’ scale reports that they did not *see* Student display limited vitality were not determinative. Other information and data confirmed that Student was regularly fatigued in the classroom. Student reported in interviews, which was reflected in scale responses, that Student would put on a mask in

class. Student would compartmentalize when at school. Student suppressed Tourette's disorder tics in the class setting. Horsfall reported that this eventually resulted in

- somatic complaints,
- anxiety,
- inability to do assignments and tests, and
- very poor attendance.

In other words, Student's efforts at maintaining themselves in the classroom, and not be reactive, was exhausting. Student met the eligibility criteria for other health impairment.

IRVINE'S OCTOBER 2021 IEP'S FINDING THAT STUDENT WAS NOT ELIGIBLE DENIED STUDENT A FAPE

The October 2021 IEP team's reliance on the eligibility recommendations of the October 2021 multidisciplinary assessment report was misplaced and improper. The data and information gathered by Irvine's assessment established that Student met the eligibility criteria for other health impairment and emotional disturbance. Student's IEP team was charged with ensuring that the evaluation upon which it relied was appropriate and reliable, rather than uncritically accepting the assessors' conclusions. (Ed. Code, § 56330; 34 C.F.R. § 300.306(c)(1).) The Irvine IEP team members failed to independently consider the relevant data contained in the multidisciplinary assessment, but instead relied on the assessors' flawed data interpretation and eligibility analysis.

Irvine's multidisciplinary assessment included substantial data and information from multiple sources that confirmed Student's special education eligibility. However, the assessment's eligibility recommendations narrowly focused on the scale responses of three Alpine teachers, while generally dismissing Mother's and Student's scale

responses and concerns to the home setting, and discounting the findings of Irvine's own ERMHS specialist. Student required special education instruction, services, or both, which could not be provided without modification of the general education program. (20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a); (Ed. Code § 56026, subd. (b); 5 C.C.R. § 3030(a).) The assessment confirmed that Student suffered from a broad range of mental health issues, which seeped into every area of Student's life, and affected Student's ability to successfully navigate school's academic demands, without an intense therapeutic supportive environment.

Here, the failure of Irvine's assessors and the Irvine IEP team members to appropriately consider the available information and data relevant to Student's eligibility, constituted procedural violations. (*Park v. Anaheim, supra*, 464 F.3d at pp. 1031-1033.) These procedural violations, in failing to find Student eligible for special education at the October, November, and December 2021 IEP meetings, impeded Student's right to a FAPE and deprived Student of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Student prevails on Student's Issue 6.

STUDENT'S ISSUE 7: DID IRVINE DENY STUDENT A FAPE BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AT THE MAY 3, 2022 IEP MEETING?

Student asserted that Irvine should have found Student eligible for special education at the May 3, 2022 IEP team meeting, where Student's expert presented her independent educational evaluation of Student, recommending Student be made eligible

for special education under the categories of emotional disturbance and other health impairment. Irvine contended it appropriately continued the May 3, 2022 IEP team meeting due to time constraints and found Student eligible for special education under the eligibility of other health impairment at the continued meeting on June 1, 2022.

DR. SHINN'S INDEPENDENT EDUCATIONAL EVALUATION AND PLACEMENT ASSESSMENT

Parents retained Dr. Marta M. Shinn, a clinical psychologist, who conducted Student's independent educational evaluation in January and February 2022 and issued a 41-page report. Dr. Shinn went to Alpine to interview, observe, and assess Student. Doctor of psychology, Tracy Truong, assisted Dr. Shinn in the evaluation. Dr. Shinn had a bachelor's degree in psychology, a master's degree in educational school psychology, and a doctorate in psychology. She was a licensed clinical psychologist since 2009 and a licensed educational psychologist since 2007. Dr. Shinn started private practice in 2010, forming Variations Psychology PC, focusing on child and adolescent psychological and educational evaluations and providing psychological consultation services to families, schools and colleges.

To assess Student, Dr. Shinn reviewed all available educational records, including Irvine's October 2021 multidisciplinary report, the October 2022 Section 504 Plan, the May and October 2021 assessment plans, and Irvine's and Alpine's 2021-2022 academic progress reports, Alpine's Treatment Review Summary Monthly Reports for the eight months of Student's Alpine attendance, and five Alpine Incident Reports regarding Student. Dr. Shinn also reviewed Student's former family teachers' January 4, 2022 summary update to Student's new family teachers at the new residence.

Dr. Shinn interviewed therapist Horsfall, special education director Donna Jenkins, Mr. Shaw, Student's former family teacher, and Parent. Dr. Shinn observed Student in Chemistry class. Dr. Shinn interviewed Student using the behavior rating system's self-report profile, and subsequently conducted a clinical interview of Student, where Student reviewed their mental health history, suicide attempts, cutting behaviors, and other self-injurious behaviors. Dr. Shinn administered several assessment instruments and questionnaires to Student, Parents and Student's science teacher.

DR. SHINN FINDS STUDENT TO BE ELIGIBLE FOR SPECIAL EDUCATION

Based on her assessment, Dr. Shinn found that Student experienced depression, anxiety, and struggles with mental and physical health, which affected Student's participation in school. Although provided a Section 504 plan at University, the plan was inadequate to support Student's emotional and psychological needs, so that Student could participate and benefit from their education. Student's needs were consistent with their multiple diagnoses. Dr. Shinn determined that Student met the criteria for emotional disturbance eligibility and other health impairment eligibility for special education.

Dr. Shin applied her findings and data to the emotional disturbance criteria and determined that Student had each of the five characteristics of emotional disturbance, over a long period of time and to a marked degree. (34 C.F.R. § 300.8(c)(4).) Student also expended substantial energy in trying to control the Tourette's symptoms and in maintaining attention and focus associated with the ADHD diagnosis. Both

- were long-standing chronic conditions,
- caused high levels of internal distraction,

- contributed to a short attention span, and a
- ffected Student's ability to timely and efficiently do schoolwork without being dysregulated.

Therefore, Dr. Shin found that Student met the criteria for other health impairment eligibility. (34 C.F.R. § 300.8(c)(9).)

Dr. Shinn recommended a special education program, near the family home, with an academic environment that was calming, highly structured, and supportive, to manage Student's ongoing mental health needs and prevent regression to another mental health crisis.

STUDENT LEAVES ALPINE ACADEMY

Parents permitted Student to leave Alpine and return home on March 17, 2022. Parents and Student met with Irvine on March 18, 2022, to discuss reenrolling Student, when Irvine proposed a Section 504 plan for Student upon their return to University. On March 22, 2022, Parents signed and agreed to implementation of the Section 504 Plan but reserved all rights regarding Irvine's failure to find Student eligible for special education.

On April 18, 2022, Student's attorney forwarded a copy of Dr. Shinn's report to Irvine's attorney and requested an IEP team meeting to review it.

MAY 2022 IEP TEAM REVIEW OF DR. SHINN'S INDEPENDENT EDUCATIONAL EVALUATION

Irvine convened two meetings to review and consider Dr. Shinn's independent educational evaluation. Student asserted that the IEP denied Student a FAPE by not

finding Student eligible for special education at the first, May 3, 2022 meeting. Irvine contends the May 3, 2022 IEP team meeting adjourned because of time constraints and reconvened on June 1, 2022, before the end of the school year, when Irvine found Student eligible for other health impairment.

On May 3, 2022, Irvine convened an IEP team meeting to review Dr. Shinn's independent psychoeducational evaluation of Student. All requisite IEP team members attended, including Mother, Father, and family advocate Patricia. Dr. Shinn and Dr. Truong appeared to discuss their report.

Dr. Shinn presented her independent evaluation's assessments and findings, concluding that Student met the criteria for emotional disturbance and other health impairment. She shared that of the two eligibilities, emotional disturbance was the more appropriate category of eligibility. Dr. Shinn told the IEP team that Alpine was the appropriate placement for Student from May 2021 through March 2022, but agreed that Student had sufficiently stabilized to transition back to living with family in California. She recommended goals to address Student's executive functioning and social/emotional needs.

Dr. Shinn told the team she was surprised at the tone of the conversation in the meeting, talking about clubs Student could join. Student had significant mental health concerns and Dr. Shinn felt that the team did not understand the magnitude of Student's mental health struggles. In testimony, Dr. Shinn said she learned of Student's return to University, without special education support, before the IEP team meeting. Though supportive of Student, Dr. Shinn believed that the University placement, without

special educational mental health supports to address their emotional disturbance eligibility needs, could trigger a reoccurrence of the destructive and debilitating dysregulation, which required a residential treatment center.

Due to time constraints, the meeting adjourned.

STUDENT DID NOT PROVE THAT IRVINE WAS REQUIRED TO MAKE AN ELIGIBILITY DETERMINATION AT THE MAY 3, 2022 IEP TEAM MEETING

Dr. Shinn presented her assessment findings and recommendations at the May 3, 2022 IEP team meeting. The IEP notes stated the team then adjourned, due to time constraints. A subsequent team meeting was convened on June 1, 2022, where Irvine found Student met the criteria for other health impairment eligibility. Student did not submit testimonial or documentary evidence that the meeting was adjourned for any reason other than time constraints. Having more than one meeting to complete an IEP, especially when reviewing assessments, was not unusual. For example, two meetings were necessary to review Irvine's multidisciplinary assessment for the October 2021 IEP. Student did not cite to law requiring an eligibility decision at an IEP team's first meeting, especially when the 60-day time limitation (Ed. Code, §§ 56043(c) and 56344) was not applicable, as here with an independent educational evaluation IEP team review.

Parents on behalf of Student filed this due process complaint on May 6, 2022. If Student wanted to assure that Irvine's eligibility findings and offer were part of this due process, Student could have waited to file the complaint until after the second meeting or have filed a motion to amend the complaint after its filing. Student did neither. Irvine's eligibility offer was made after the filing of Student's complaint and was not part of this due process.

Student did not meet their burden of proof, by a preponderance of the evidence, that Irvine was required to make its eligibility determination at the May 3, 2022 IEP team meeting. Irvine prevails on Student's Issue 7.

STUDENT'S ISSUE 1B: IF IRVINE FAILED TO MEET ITS CHILD FIND OBLIGATION, DID IRVINE'S CHILD FIND FAILURE DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR?

Student contended that if Irvine had timely and properly assessed when its child find obligation was triggered, the information and data collected would have required Student's IEP team to find Student eligible for special education under the category of emotional disturbance. Irvine asserted that an assessment of Student would not have demonstrated eligibility.

Student successfully met the burden of proving, by a preponderance of evidence, that Irvine failed to meet its child find duty. However, eligibility for special education and related services was then, and is now, a fundamental prerequisite for entitlement to benefits under the IDEA. (See, *D.G. v. Flour Bluff Independent School Dist.*, *supra*, 481 Fed.App. 887, 891-894; *M.A. Torrington Board of Education*, *supra*, 980 F.Supp.2d 279, 287.) Irvine's failure to meet its child find duty denied Student a FAPE only if a timely assessment would have produced information and data demonstrating Student's eligibility for special education.

DATE BY WHICH STUDENT SHOULD HAVE BEEN ASSESSED

Child find was triggered on November 16, 2020, when Irvine should have referred Student for assessment. Within 15 calendar days of the November 16, 2020 referral, Irvine was required to provide Parents with a proposed assessment plan (Ed. Code,

§ 56043(a)), which meant by December 2, 2020. Parents had 15 days within which to return the signed plan (Ed. Code, § 56043(b)). If Parents took the full 15 days, they would have returned the signed assessment plan on December 17, 2020.

Education Code sections 56043(c) and 56344 required Irvine to complete its assessment of Student and hold Student's initial IEP team meeting within 60 days of receiving Parents signed consent, not counting days between regular school sessions, terms, or days of school vacation in excess of five school days. Irvine's two-week winter break started Monday, December 21, 2020 and school recommenced on January 4, 2021. Therefore, excluding the 10 school days of school winter break, the 60th day, by which Irvine was to have held Student's IEP, was Thursday, February 25, 2021.

IRVINE SHOULD HAVE MADE STUDENT ELIGIBLE FOR SPECIAL EDUCATION, AS A STUDENT WITH AN EMOTIONAL DISTURBANCE, BY FEBRUARY 25, 2021.

Student had the burden of proving Student had an IDEA-qualifying disability that would have supported eligibility, thus entitling Students to the benefits of the IDEA. (*Hacienda La Puente Unified School Dist. v Honig* (9th Cir. 1992) 976 F.2d 487, 492 (*Honig*)). An IDEA-qualifying disability refers to the disability criteria for determining a student's eligibility for special education under the Individuals with Disabilities Education Act. (Cal. Code Regs. tit. 5, § 3030 subd. (b) (2014).)

A student who has not been previously identified as disabled may raise the alleged disability in a due process hearing. In *Honig*, the Ninth Circuit held that eligibility may be raised in an IDEA administrative due process hearing. (*Honig* at

p. 492).) However, *Honig* did not relieve the student from meeting the burden of proof of eligibility if the student challenged the school district's failure to find the student eligible. (See, *Schaffer v. Weast, supra*, 546 U.S. at p. 62,)

The IDEA does not necessarily require a private evaluator to follow the criteria applicable to district assessments. However, the criteria are foundationally instructive when considering the credibility of Student's selected expert, the testimony of district personnel familiar with Student, and whether Student met their burden of proof related to special education eligibility.

Student's expert, Dr. Shinn, was properly trained and possessed the experience to assess Student in the areas of suspected disability. She qualified as an expert in her field and, based upon foundational knowledge gathered during her assessment of Student, was qualified to render an expert opinion regarding Student's

- disabilities,
- eligibilities,
- mental health,
- educational supports, and
- placement.

If Dr Shinn was a school district assessor, she would have met the statutory requirements. (Ed. Code, §§ 56320 & 56322.) Dr. Shinn considered information from all available sources, including Irvine's multidisciplinary report, in her findings and analysis. Dr. Shinn's opinions were supported by evidence and sound analysis.

Dr. Shinn emphasized in her assessment report and testimony that Student's serious mental health struggles were chronic and preceded Student's move to Irvine and attendance at University. As of February 2021, Student was diagnosed with

- Tourette's Syndrome in 2013, OCD in 2017,
- major depressive disorder in March 2020,
- generalized anxiety disorder in June 2020, and
- ADHD in November 2020, with symptoms of bipolar disorder.

Irvine's and Dr. Shinn's later assessments confirmed these diagnoses and that Student manifested associated symptoms and behaviors.

Before February 2021, Student had been under the care of psychiatrists, psychologists, and therapists. Student

- had long-standing suicidal ideation,
- was previously hospitalized for suicide attempts,
- attempted suicide three times the prior summer,
- suffered from debilitating episodes of anxiety and stress that affected their academic performance long before attending University, and
- had a history of self-injurious behaviors.

In February 2021, Student had been chronically absent from school, was not completing their assignments and tests, and was failing most of their academic courses. University teachers confirmed seeing Student anxious and stressed, adjusting assignment due dates and schedules. The October 2020 Section 504 plan had, by February 2021, proved unsuccessful in enabling Student to productively participate in school.

Both Irvine's and Dr. Shinn's assessments confirmed that Student would have met the criteria for emotional disturbance eligibility if Student had been assessed in February 2021. All of the mental health issues preceded Student's March 2021 suicide attempt, subsequent treatment at Evolve, and May 2021 placement at the Alpine residential treatment center. As analyzed above in Student's Issue 6, the documented cycles of dysregulation, one of which Student was experiencing in February 2021, affected Student's ability to maintain their academics. Similarly, Student's diagnosed conditions contributed to an inability to make and sustain healthy peer relationships, in all settings, including school. As of February 25, 2021, Student exhibited one or more of the five statutorily identified characteristics, over a long period of time and to a marked degree, that affected Student's educational performance. (34 C.F.R. Sec. 300.8(c)(4); 5 C.C.R. Sec. 3030(b)(4).) Student demonstrated that Student would have been found eligible as a child with an emotional disturbance.

Here, Student met the burden of proof, by a preponderance of the evidence, that a timely assessment of Student by February 25, 2021 would have produced information and data demonstrating Student's eligibility for special education under the category of emotional disturbance. Student prevails on Student's Issue 1.

STUDENT'S ISSUE 2: DID IRVINE DENY STUDENT A FAPE BY FAILING TO MEET ITS OBLIGATIONS TO APPROPRIATELY IDENTIFY STUDENT'S UNIQUE NEEDS AND TIMELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY DURING THE 2020-2021 SCHOOL YEAR WHEN IT DID NOT COMMUNICATE WITH STUDENT'S HEALTH CARE PROVIDERS?

Student contended that Irvine denied Student a FAPE because Irvine should have contacted Student's various health care providers when informed that Student had a

new psychiatrist in November 2020, when Student was at Evolve from late March to mid-May 2021, and when Student was returning to University from Alpine in March 2022. Irvine disputes the factual assertions, and further denied they amounted to a denial of FAPE.

Student asserted that Irvine did not establish and maintain communication while Student was at Evolve to ensure Student had access to their education. However, University teachers provided work and communicated with Student when they were at Evolve but Student's participation was sporadic, at best. Therefore, the evidentiary record did not support a finding that Irvine did not communicate and attempt to provide educational support while Student was at Evolve.

Student asserted that Irvine's failure to communicate with Student's health care providers meant that Irvine was uninformed regarding Student's mental health. Student argued that if Irvine had communicated, Irvine would have learned information which would have caused it to assess Student. Student asserted that if Irvine remained in contact with Student's providers at Alpine, Irvine would have had an appropriate placement and transition in place to meet Student's needs. However, Student did not offer persuasive or sufficient evidence that contacting Student's mental health providers or keeping in contact with Alpine would have resulted in an assessment or assured a transition plan when Student returned to University from Alpine.

Irvine denied Student a FAPE because Irvine failed to meet its child find duty, refer Student for assessment in November 2020, and assess Student by February 25, 2021. Also, Irvine did not have an appropriate placement and transition plan when

Student left Alpine in March 2022, because Irvine had erroneously declined to find Student eligible for special education, by not assessing by February 2021 and at the October 2021 IEP team meetings.

Student did not meet their burden of proof, by a preponderance of the evidence, as to Issue 2. Irvine prevails on Student's Issue 2.

STUDENT'S ISSUE 3: DID IRVINE DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT AN APPROPRIATE EDUCATION THROUGHOUT THE 2020-2021 SCHOOL YEAR?

STUDENT'S ISSUE 8: DID IRVINE DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT AN APPROPRIATE EDUCATION TO THEM DURING THE 2021-2022 SCHOOL YEAR?

Student contended in Issue 3 and Issue 8 that Irvine's failure to assess and find Student eligible denied Student a FAPE for the 2020-2021 and 2021-2022 school years. Irvine maintained that Student was not eligible for special education, before the filing of Student's complaint. These two issues are addressed together for purposes of analysis.

Irvine did not find Student eligible for special education at any time before the filing of Student's complaint. However, as resolved in Student's Issue 1, Irvine's child find obligation to refer Student for assessment was triggered in November 2020 and Irvine was required to assess Student and hold an IEP team meeting by February 25, 2021, where Student would have been found to have met the emotional disturbance

eligibility criteria. Student was therefore a Student with disabilities, entitled to a FAPE, from February 25, 2021 through the filing of the Student's complaint on May 6, 2022. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.)

FAPE means special education and related services that was available to the student at no cost to the parents, that met the state educational standards, and that conformed to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (p).) A child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

Irvine did not offer Student a special education placement and related service, individually designed to provide educational benefit through an IEP. Therefore, from February 25, 2021, to the filing of Student's complaint on May 6, 2022, Irvine failed to provide Student with an appropriate education and denied Student a FAPE. Student prevails on Student's Issue 3 and Student's Issue 8.

STUDENT'S ISSUE 4: DID IRVINE DENY STUDENT A FAPE BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE IN RESPONSE TO PARENTS' JULY 7, 2021 AND AUGUST 6, 2021 REQUESTS FOR INFORMATION REGARDING IRVINE'S ASSESSMENT TIMELINE FOR STUDENT?

Student contended Irvine failed to provide Parents with statutorily required prior written notices explaining why it was not proceeding with Student's assessment over the

summer 2021, in response to two requests by Student's attorney on July 7 and August 6, 2021. Student argued that Irvine's failure meant Parents were uninformed as to the basis of Irvine's inaction of not assessing Student until September 2021. This lack of knowledge prevented Parents from effectively participating in Student's IEP, which denied Student a FAPE. Irvine argued that it had no obligation to provide prior written notices to Parent in response to their attorney's July and August 2021 letters.

A parent has a right to receive prior written notice when the school district initiates or refuses their request to initiate a change in their child's identification, assessment, or educational placement in special education. (Ed. Code § 56500.4.)

Here, Irvine's director of education O'Malley, provided Parents with a prior written notice on June 24, 2021, explaining the timeline for its assessment of Student. Irvine stated that it received the parentally signed assessment plan on June 10, 2021, after the conclusion of the 2020-2021 school year. Irvine explained that Student would therefore be assessed at the start of the 2021-2022 school year and an IEP meeting would be held, within the statutory time frame. Though O'Malley did not refer to the controlling statutes, the director explained that the assessment would not begin until the new school year because the school was on break over the summer for more than five days.

Education Code sections 56043(c) and 56344 required Irvine to complete its assessment of Student and hold Student's initial IEP team meeting within 60 days of receiving Parents signed consent. not counting days between Student's regular school sessions, terms, or days of school vacation in excess of five school days. O'Malley could

have explained the computation of the timeline in greater detail, but Irvine's basis for not beginning Student's assessment during summer break was sufficiently stated in the June 24, 2021 prior written notice.

Student's assertion that Irvine did not explain why Student's assessment would not start until the beginning the 2021-2022 school year was factually incorrect. Irvine's duty to issue a prior written notice was not triggered when Student's attorney asked a question that Irvine already answered in a previous prior written notice. Student did not meet their burden of proof. Irvine prevails on Student's Issue 4.

STUDENT'S ISSUE 5: DID IRVINE DENY STUDENT A FAPE BY FAILING TO COMPLETE STUDENT'S ASSESSMENTS WITHIN 60 DAYS OF PARENTS' CONSENT TO THE 2021 INITIAL ASSESSMENT PLAN?

Student contended that Irvine failed to assess and hold an IEP team meeting within the statutory 60-day timeline because Irvine did not give Parent's a final copy of the multidisciplinary assessment report until November 8, 2021, at the second IEP team meeting. As a result of the delay, Student argued that Parents were denied information vital to their full participation in the October 2021 IEP team meeting, denying Student a FAPE. Irvine contended that Student's assertion was factually wrong, and that Irvine properly and timely assessed and held Student's IEP.

Irvine began its assessment of Student on the first day of the District's 2021-2022 school year, which was August 19, 2021. (Ed. Code, §§ 56043(a); 56344(a).) Irvine convened an IEP team meeting to review the completed assessment on October 14, 2021. This was within the statutory 60-day timeline. (Ed. Code, §§ 56043(c) and 56344.) At the October 14, 2021 meeting, Parents had a copy of Irvine's multidisciplinary

assessment report. Parents provided Dr. Weedn with additional information to update the background history of the report, and informed Dr. Weedn that Student preferred the gender neutral pronouns of they/them. Dr. Weedn added the information that Parent noted and assured that all pronoun references to Student were gender neutral, making the revisions on October 28, 2021. The revised report was provided to Parents at the IEP's Part Two team meeting on November 8, 2021.

Parents timely received Irvine's multidisciplinary assessment report by the October 14, 2021 team meeting. Student offered no evidence of any subsequent substantive changes to the report. The minor revisions made by Dr. Weedn were at Parents' request and did not change or alter any assessment result, finding, or analysis. Parents were not in any way denied information that was vital to their IEP participation.

Irvine did not deny Student a FAPE because it made minor revisions to its assessment report, at Parents' request. Irvine prevails on Student's Issue 5.

IRVINE'S ISSUE 1: WAS IRVINE'S OCTOBER 14, 2021 MULTIDISCIPLINARY ASSESSMENT REPORT APPROPRIATE WITHIN THE MEANING OF EDUCATION CODE SECTION 56329(C), SUCH THAT IRVINE IS NOT REQUIRED TO FUND INDEPENDENT EDUCATIONAL EVALUATIONS AT PUBLIC EXPENSE?

Parents disagreed with Student's multidisciplinary assessment at the October 2021 IEP team meetings and, on December 15, 2021, formally requested Irvine to fund an independent educational evaluation by Dr. Shinn. Irvine declined to fund in a January 5,

2022, prior written notice to Parents. Irvine then filed its due process request on January 14, 2022. Irvine sought a determination that its October 2021 multidisciplinary assessment of Student was legally compliant, and that Irvine was not required to fund an independent educational assessment requested by Parents. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subds. (b) and (c).)

Assessments must be conducted by individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area. (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

Irvine's multidisciplinary assessment report was reviewed in Student's Issue 6, above. Irvine's assessment team members met all legal requirements as trained and knowledgeable personnel. The standardized testing instruments were administered in accord with the tests' protocols. Student's expert Dr. Shinn had no criticism with the fidelity of the tests' administration.

However, Irvine's assessment team failed to review all available records which would have provided the team with useful, and some vital, information regarding Student's social-emotional struggles, including an inability to build and maintain peer

relationships. The Irvine assessment team did not review Alpine's monthly Treatment Review Summary Reports on Student. These monthly reports provided valuable insights into

- Student's treatment goals,
- therapeutic program,
- relational conflicts with peers,
- use of coping skills, and
- academic work.

The monthly reports included Student's self-report on troublesome situations, behaviors, moods, and conflicts, and contained regular suicide risk assessments. Irvine also did not review Alpine incident reports involving Student, including Student eloping from the Alpine campus.

Notably, Irvine's eligibility analysis was lacking in breadth and balance. Student's and Parents' reports and scale responses were minimized as being home or family concerns. The analysis misrepresented that University teachers did not observe Student's stress or anxiety in the classroom, directly contradicting teachers' Section 504 reports and testimony. And Irvine's eligibility analysis over relied upon and narrowly viewed Alpine teacher scale responses, generally concluding if the teachers did not see a characteristic in the classroom, it did not exist or was not to a marked degree. The eligibility analysis seemingly disregarded the nature of Student's mental health disabilities, which were significantly internalized and exhausting to control, and could erupt into deregulatory cycles, that prevented Student from remaining academically engaged. Most disturbing was the assessor's reference to Parents' statement that many of Student's suicide attempts seemed half-hearted, without further analysis. Yet,

Children's Hospital and Evolve would not release Student unless Student entered a secure, residential program. And Student's episodes of dysregulation caused or contributed to by anxiety and stress from their academic performance, was still a therapeutic concern at Alpine. The simple reality was that only one suicide attempt need be sincere to be effective. The eligibility analysis was not legally compliant because it did not properly set forth a basis for its eligibility findings and recommendations. (Ed. Code, § 56327, subds. (a), (b).)

Irvine did not meet its burden of proof, by a preponderance of the evidence, that its October 2021 multidisciplinary assessment of Student was appropriate within the meaning of Education Code, section 56329(c). Student prevails on District's Issue 1.

IRVINE'S ISSUE 2: WAS IRVINE'S NOVEMBER 10, 2021, SPEECH AND LANGUAGE ASSESSMENT REPORT APPROPRIATE WITHIN THE MEANING OF EDUCATION CODE SECTION 56329(C), SUCH THAT IRVINE IS NOT REQUIRED TO FUND INDEPENDENT EDUCATIONAL EVALUATIONS AT PUBLIC EXPENSE?

Irvine contended that its November 2021 multidisciplinary assessment of Student was appropriate and complied with all legal requirements. Therefore, Irvine was not obligated to fund an independent educational evaluation that Parents requested.

The Irvine assessment team wanted to evaluate Student's pragmatics and proposed a speech and language assessment. Parents signed the assessment plan. Speech pathologist Meghan Sparling conducted the assessment and produced a written, legally compliant, 25-page Speech/Language Assessment report dated November 10, 2021. She had bachelor's and master's degrees in speech pathology,

held a clinical service credential for more than 17 years, and had worked for Irvine since 2007. Sparling's education, credentials, and experience qualified her to administer standardized tests and conduct Student's speech and language assessment. (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).)

Sparling testified at the hearing. Before traveling to Utah, she reviewed Irvine's multidisciplinary assessment, Student's medical and academic history, and forwarded rating scales to Student's Alpine math and English teachers. Sparling chose technically sound instruments that properly assessed Student's speech and language, taking into account Student's cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).)

Sparling talked to Student, clinically observed Student during testing and lunch at Alpine, and summarized her observations in the report. She had Student complete a Social Skills for Daily Living Survey, concluding that the results were an accurate representation of Student's social skills from Student's perspective. Sparling had the teachers complete CELF-5 Pragmatics Profile and Observational Rating scales, evaluated Student's peripheral speech structures and functions, and took speech and language samples. She administered the Oral and Written Language Scales, 2nd Edition, the Clinical Assessment of Pragmatics, and the Test of Problem Solving, 2nd Edition – Adolescent. Sparling administered the standardized instruments in accordance with the test protocols. She reported and interpreted the results of each test. Sparling also used non-standardized language measures, evaluating Student's conversational, reciprocal, and friendship language skills, fully reporting the evaluative results. Sparling concluded the report by summarizing the assessment results and analyzing whether Student met the

statutory criteria for speech and language impairment eligibility (34 C.F.R. § 300.8(c)(11)). Sparling produced a written report of each assessment, interpreted the results, and analyzed whether Student qualified under speech and language impairment, in compliance with state and federal statutes and regulation and was legally appropriate. (Ed. Code, § 56327, subds. (a), (b).)

Irvine met its burden of proof, by a preponderance of the evidence, that its November 10, 2021 speech and language assessment of Student was appropriate and complied with all legal requirements. Therefore, Irvine is not required to fund the independent speech and language evaluation request by Parents. Irvine prevails on Irvine's Issue 2.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

STUDENT'S ISSUE 1:

Irvine denied Student a FAPE by failing to meet its child find obligations by not identifying Student's needs and timely assessing in all areas of suspected disability during the 2020-2021 school year.

Student prevails on Student's Issue 1.

STUDENT'S ISSUE 2:

Irvine did not deny Student a FAPE by failing to meet its obligations to appropriately identify Student's unique needs and timely assess Student in all areas of suspected disability during the 2020-2021 school year when it did not communicate with Student's health care providers.

Irvine prevails on Student's Issue 2.

STUDENT'S ISSUE 3:

Irvine denied Student a FAPE by failing to provide Student an appropriate education throughout the 2020-2021 school year.

Student prevails on Student's Issue 3.

STUDENT'S ISSUE 4:

Irvine did not deny Student a FAPE by failing to provide Parents prior written notice in response to Parents' July 7, 2021 and August 6, 2021 requests regarding Irvine's assessment timeline for Student.

Irvine prevails on Student's Issue 4.

STUDENT'S ISSUE 5:

Irvine did not deny Student a FAPE by failing to complete Student's assessments within 60 days of Parents' consent to the 2021 initial assessment plan.

Irvine prevails on Student's Issue 5.

STUDENT'S ISSUE 6:

Irvine denied Student a FAPE by failing to find Student eligible for special education at the October 14, November 8, and December 9, 2021 IEP team meetings.

Student prevails on Student's Issue 6.

STUDENT'S ISSUE 7:

Irvine did not deny Student a FAPE by failing to find Student eligible for special education at the May 3, 2022 IEP meeting.

Irvine prevails on Student's Issue 7.

STUDENT'S ISSUE 8:

Irvine denied Student a FAPE by failing to provide Student an appropriate education throughout the 2021-2022 school year.

Student prevails on Student's Issue 8.

IRVINE'S ISSUE 1:

Irvine's October 14, 2021 multidisciplinary assessment report was not appropriate within the meaning of Education Code section 56329(c), and Irvine is required to fund an independent educational evaluation at public expense.

Student prevails on Irvine's Issue 1.

IRVINE'S ISSUE 2:

Irvine's November 10, 2021, speech and language assessment report was appropriate within the meaning of Education Code section 56329(c), such that Irvine is not required to fund independent educational evaluations at public expense.

Irvine prevails on Irvine's Issue 2.

REMEDIES

Student seeks three remedies:

1. Reimbursement for costs related to Dr. Shinn's independent educational evaluation;
2. reimbursement of mileage costs incurred by Parents for traveling to and from Evolve; and
3. reimbursement for all costs associated with Student's placement at Alpine, including transportation costs related to the placement.

DR. SHINN'S INDEPENDENT EDUCATIONAL EVALUATION

Student prevailed on Irvine's Issue 1. Irvine's October 2021 multidisciplinary assessment of Student was not legally appropriate and, therefore, Irvine is obligated to fund the independent educational evaluation requested by Parents. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subs. (b) and (c).)

Additionally, an independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los*

Angeles Unified School Dist. v. D.L. (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-823.) An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. (34 C.F.R. § 300.502(a)(3)(i).)

Here, Dr. Shinn met the qualifications to conduct the assessment. Her findings were documented and supported by data and information gained by thorough review of records, interviews, evaluation of prior assessments, protocol-compliant administration of assessments, and a well-reasoned analysis of Student's special education eligibility. Student successfully demonstrated that Irvine failed to meet its child find duty and that Student should have been assessed and found eligible under the criteria of emotional disturbance by February 2021. Dr. Shinn's testimony and expert opinion provided insight into Student's mental health struggles and their connection to Student's academics, which enabled Student to meet their burden of proof. Equity strongly favors Student in fashioning a remedy. Here, Student is also entitled to reimbursement of costs associated with Dr. Shinn's independent educational evaluation, as an equitable remedy.

Student introduced three invoices from Dr. Shinn's private practice, Variations Psychology, which Dr. Shinn testified were paid. Two were for her services, dated January 8 and February 21, 2022, totaling \$7,750. A third invoice was for costs associated with Dr. Shin's travel and lodging to Alpine University, for \$991.24. Parents are entitled to reimbursement from Irvine for costs associated with Dr. Shinn's independent educational evaluation in a sum not to exceed \$8,741.24.

ALPINE ACADEMY

Student successfully demonstrated that Student would have been found eligible for special education as of February 25, 2021, having prevailed on Issue 1. Thereafter, Irvine was legally obligated to provide Student with a FAPE. Irvine did not.

APPLICABLE LAW

Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*)). This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11.)

When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at p. 369-371.) Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Id.*; *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F. 3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a

due process hearing that the district did not make a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. 359, 369- 370.) A school district's failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP. (*Forest Grove, supra*. 557 U.S. 230, 238-239.)

The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c).) Unilateral placement was found to be reimbursable where the placement had substantially complied with the IDEA by conducting quarterly evaluations, having a plan that permitted the student to progress from grade to grade, and where student made substantial academic progress. *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, pp. 11 & 14.)

DISCUSSION

Student was hospitalized in late March 2021 at Children's Hospital, following a suicide attempt. Parents were advised by Children's that discharging Student to return home and attend University would be unsafe and that a residential center would better assure Student's safety from further suicide attempts and self-injury. Children's discharged Student on March 31, 2021, and Student immediately entered Evolve, a short-term residential center providing intense therapeutic treatment of adolescents with mental health profiles like Student. Evolve advised Parents that a residential treatment center, which could also meet Student's academic needs, would be the proper placement because Student continued to harbor suicidal ideations and self-injurious

behaviors. Parents then began an all-consuming search for an appropriate placement, eventually deciding upon Alpine. On May 19, 2021, Student was discharged from Evolve and enrolled at Alpine.

ALPINE TUITION

The equities weigh heavily in Student's favor for reimbursement of costs associated with their placement at Alpine. Since Student was without an IEP, Parents did not have benefit of Irvine's expertise and resources. Yet, Parents choice of Alpine was thoughtful and productive. Alpine was well-suited to address Student's mental health and academic needs. Alpine was a California certified non-public school. Irvine had placed other students at Alpine. Dr. Shinn found Alpine to have been the appropriate placement. Student was immersed in an intense therapeutic environment, where Student learned skills to better manage mental health struggles. Student's participation in Alpine's school enabled Student to earn the missing ninth grade credits, so Student progressed to 10th grade. Student made substantial progress in both addressing their mental health and academics while at Alpine. Absent a FAPE from Irvine, Parents placement at Alpine was appropriate and Parents are entitled to reimbursement for reasonable costs associated with Student's placement at Alpine.

Parents paid billings from Alpine, totaling \$111,916.92. However, \$671.92 was for clothing, dental care, marketplace food, and allowance, which were costs Parents would have paid if Student were at home and are not reimbursable. The remaining sum of \$111,245.00 was for Alpine's residential tuition and is reimbursable. ($\$111,916.92 - 671.92 = \$111,245.00$)

REIMBURSABLE TRAVEL COSTS FOR ALPINE

For purposes of evaluating and calculating reimbursable costs associated with travel, this ruling will round up and round down, to the nearest dollar, similar to the practice of the Internal Revenue Service.

Parents request costs, associated with their and family members' travel to Alpine, in excess of \$13,000. This reimbursement claim is difficult to evaluate because it involved 10 trips to and from Alpine during Student's 10 months of residency. Some of the trips included Student's siblings, some both Parents, and others one Parent. Student took three round trips home in November and December 2021, and February 2022. For Thanksgiving 2021, Student visited a former nanny to whom Student was close. The travel costs were also variable. For example, Parents purchased two round trip Delta Airlines tickets for themselves, and a one-way ticket for Student, when Student was exiting Alpine on March 17, 2022. Mother's ticket cost \$377.20 and Father's cost \$737.20. The difference in cost may have been because Father's ticket was purchased less than a week before the trip, but Irvine should not have to pay for Parents' delay in making timely airline reservations.

Student did not evidentially demonstrate that these trips were therapeutically necessary or required by Student's Alpine program. Student is seeking reimbursement for monthly family visits and three Student home visits, even though Parents talked to Student twice a week and virtually participated in family therapy every week. Therefore, equity favors Irvine in that it should not be reimbursing for family or Student travel that was not part of the Alpine program or typically reimbursed by school districts when students are placed in an out-of-state residential treatment center.

Irvine's special education director Jennifer O'Malley testified at the hearing. O'Malley had been Irvine's director for about seven years. She had a master's in special education, a special education credential, and an educational leadership clear credential. Director O'Malley was informed as to residential treatment center placement of Irvine students, including the financial obligations assumed by Irvine with such placement. O'Malley testified that when an Irvine student was placed in an out-of-state residential treatment center, Irvine would pay for one visit a semester, by one parent, which would include economy airfare or mileage, car rental, and reasonable hotel or motel costs.

Having both Parents accompany Student for Alpine intake of Student on May 19, 2021 was reasonable. The claimed costs are \$172 for the motel and \$102 for car rental. Parents used frequent flyer miles to pay for the airline tickets, which is not reimbursable, but they did incur \$94 for incidental charges and baggage associated with the three Delta Airlines tickets. The total reimbursable sum for the trip is \$368.

Similarly, costs associated with travel to exit Student from Alpine on March 17, 2022, is reimbursable for both Parents and Student, since Alpine's discharge included recommendations to Parents regarding Student's follow-up care and support. The reimbursables are:

- Parents two roundtrip airline tickets at \$377 per ticket, for \$754;
- one-way ticket home for Student \$199;
- car rental of \$132; and
- lodging of \$113.

The total reimbursable sum for the trip is \$1,198.

Three other trips, involving one Parent, are reimbursable. The airfares being claimed by Parents for roundtrip tickets greatly varied, ranging from about \$380 to \$735. A lower mid-range of \$450 per roundtrip ticket is a reasonable reimbursement sum. Lodging costs also varied amongst the many trips, but a reasonable sum for one night would be \$170, which is what Parents paid Dr. Shinn for her trip to Alpine. Car rental costs also varied, but a low mid-range cost of \$150 is reasonable. The reimbursables for each such trip are:

- one roundtrip airline ticket at \$450;
- one night lodging for \$170; and
- car rental of \$150.

The total reimbursable sum for each trip is \$770. The reimbursable cost of the three trips is \$2,310.

Student took three trips home and another trip for Thanksgiving to see their former Nanny. Student's therapist Horsfall shared in an interview that he was trying to persuade Student to take a trip home for the holidays. Otherwise, Student did not submit persuasive evidence that Student's trips were required as part of their therapeutic program. The evidence supports reimbursement of roundtrip airfare for one trip home by Student. The remaining Student trips are not reasonably reimbursable. The reimbursement sum for the trip is \$450.

Student's total reimbursement for travel expenses associated with the Alpine placement is: \$368 plus \$1,198 plus \$2,310 plus \$450, which is \$4,326. The remaining claims for Alpine travel related expenses are denied.

MILEAGE COSTS FOR EVOLVE

Student requests reimbursement for the mileage incurred by Parents in traveling between home and Evolve. Student was at Evolve from March 31 to May 19, 2021. Evolve was not a nonpublic school and did not otherwise provide academics. Evolve focused on mental health for its residential patients. Student did some academic work while at Evolve, but University teachers provided the work.

Parents chose Evolve for the purpose of keeping Student safe. Evolve was not a school, like Alpine, and Student did not demonstrate that Evolve provided academic benefit. Therefore, Student is not equitably entitled to any reimbursement associated with their time at Evolve, including mileage reimbursement to Parents. Student's request for mileage reimbursement incurred by Parents in traveling to and from Evolve is denied.

IRVINE'S REIMBURSEMENT PROCESS

All the remedies are financial reimbursements. The processing of reimbursement claims, and the attendant paperwork, can cause confusion and unnecessary delays. Therefore, Parents and Irvine are to follow these guidelines regarding the reimbursements afforded by this decision.

PROOFS OF PAYMENT

School districts generally require a billing or invoice describing the purchased item or delivered service, along with proof of payment. Here, Parents must include proofs of payment to Irvine with the reimbursement claims recognized by this decision. A bill or invoice stamped "paid," or Parents' testimony in this hearing that they paid the bill, is insufficient for Irvine to financially account for a reimbursement. However, Irvine

is cautioned that Parents' proof of payment need not have been admitted as evidence in this hearing. Parents testimony and documentation at the hearing sufficiently proved up their right to reimbursement. But obviously, if Parents cannot produce proof of payment, Irvine is not required to reimburse.

PROOFS OF PAYMENT BY INDIVIDUALS OTHER THAN PARENTS

Parents acknowledged they could not have paid for the expenses associated with Student's placement at Alpine without the assistance of others, primarily relatives. Therefore, some of the proofs of payment related to Alpine expenses may be from someone other than Parents. However, these payments were loans to Parents, and Parents obligated themselves to repay the loans. Irvine shall honor any proofs of payment to Alpine by someone other than Parents and reimburse Parents.

REQUISITE PAPERWORK IN SUPPORT OF TRAVEL RELATED REIMBURSEMENTS

The amount of reimbursement provided to Parents by this decision for travel related costs is \$4,326. This sum was computed using reasonable lower mid-range estimates for various costs. Therefore, Parents are not required to submit an invoice and proof of payment for any particular trip or expense. Instead, Parents need only submit invoices and proofs of payment for any of Parents' and/or Student's travel related expenses, up to the maximum reimbursement sum of \$4,326. Once Irvine has reimbursed the maximum, its travel-related reimbursement obligation will have been satisfied.

ORDER

1. Student is eligible for special education, under the eligibility categories of emotional disturbance and other health impairment.
2. Within 45 days of this decision, Irvine shall convene an IEP team meeting, at which emotional disturbance will be designated Student's primary eligibility and other health impairment will be designated Student's secondary eligibility. The IEP team will fashion an IEP with goals to address both eligibilities, appropriate related services, accommodations, and placement. Student retains the right to not accept Irvine's IEP offer, and challenge whether it provides a FAPE.
3. Irvine shall reimburse Parents \$8,741.24 for costs related to Dr. Marta Shinn's independent educational evaluation, within 30 days of receipt of the reimbursement claim paperwork from Parents.
4. Irvine shall reimburse Parents \$111,245 for Alpine's residential tuition, within 30 days of receipt of the reimbursement claim paperwork from Parents.
5. Irvine shall reimburse Parents up to \$4,326, for travel expenses associated with Alpine, within 30 days of receipt of the reimbursement claim paperwork from Parents.
6. Parents and Irvine shall process the reimbursement claims as outlined in the Remedy section of this Decision.
7. Irvine is not required to fund an independent educational evaluation in speech and language, as requested by Parents.

RIGHT TO APPEAL THIS DECISION

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

/s/

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings