

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF  
EDUCATION.

OAH CASE NO. 2011090350

**DECISION**

Administrative Law Judge (ALJ) Darrell L. Lepkowsky of the Office of Administrative Hearings (OAH), State of California, heard this matter in Downey, California, on February 21, 22, 23, and 29, 2012.

Attorneys Edwin Egelsee and Sara Gapasin represented Student. Student's mother (Mother) was present at the hearing at all times. Mother was assisted by Spanish language interpreter Victor Ramos on all hearing days. Student was not present and did not testify at the hearing.

Attorney Courtney Brady represented the Los Angeles County Office of Education (LACOE). She was accompanied by Denise Hurst, LACOE's Special Education Administrator for Compliance Support Services, on all days and by LACOE Project Director William Gee, who was present for much of the hearing.

Student filed his original Request for Due Process Hearing (complaint) on September 12, 2011, naming both LACOE and the Hacienda-La Puente Unified School Hacienda-La Puente (Hacienda-La Puente). Student settled his case with the Hacienda-La Puente on or about December 2, 2011. Student thereafter filed a motion to amend his complaint, naming only LACOE. OAH granted Student's motion to amend on December 7, 2011. OAH granted the parties' (any reference to "the parties" in this Decision is with regard to Student and LACOE) joint request for continuance on January 5, 2012.

At the hearing, oral and documentary evidence was received. The following witnesses testified at hearing: Mother; Los Angeles County Department of Mental Health (DMH) clinician Mayra Alvarez; DMH psychiatric social worker Sandra Bautista-Lechner; LACOE Assistant Principal Paulette Koss; LACOE Special Education Administrator for

Compliance Support Services Denise Hurst; Dr. Jack Schnel; LACOE special education teacher Hedy Grosshandler; LACOE school psychologist Tony Meehleis; and probation officer O'Dell Harrington.

The case was continued to March 14, 2012, at the parties' request to permit them to file written closing briefs in lieu of oral closing arguments. On March 7, 2012, the parties filed a "stipulated extension of time to file closing briefs" requesting up to and including March 21, 2012, to file their closing briefs. On March 7, 2012, the undersigned ALJ treated the stipulation as a request for a continuance and issued an order granting the parties' request, which continued the Decision due date as well. The parties timely filed their closing briefs on March 21, 2012.<sup>1</sup> The record was closed and the matter was submitted for decision on that date.

## ISSUE<sup>2</sup>

Has LACOE denied Student a free appropriate public education from July 27, 2011, to the present by failing to place him at a residential treatment center?

## OVERVIEW OF THE CASE

Student is a young man who is presently eligible for special education and related services under the primary category of emotional disturbance (sometimes referenced in this Decision as "ED."), with a secondary eligibility under the category of other health impaired. Student is presently incarcerated at the Los Padrinos Juvenile Hall (Juvenile Hall) in Los Angeles County, and attends the juvenile court school there which is under the jurisdiction of LACOE. As the ALJ will discuss in detail below, Student has a history of behavioral and mental health problems, which have resulted in unchecked sexualized compulsions to access and view pornography and to engage in compulsive masturbation, sometimes in public.

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<sup>1</sup> LACOE attached as an exhibit to its closing brief a Memorandum of Understanding between it and Los Angeles County, including the Los Angeles County Department of Mental Health, which was executed on August 19, 2011. This document was not included in LACOE's exhibit binder. Although included in Student's exhibit binder, neither Student nor LACOE referenced the document at hearing (therefore, it was never marked for identification as an exhibit) and neither party moved it into evidence. The ALJ therefore has not considered the Memorandum in arriving at her decision. Further, even had she considered it, the agreements and information in the Memorandum would not have altered the ALJ's decision in this matter.

<sup>2</sup> Student's issue was discussed at the prehearing conference in this case. The parties agreed that the issue should encompass whether Student still required a placement at a residential treatment center as of the hearing in this matter.

Student's complex mental health issues were the impetus for his eventual incarceration in Juvenile Hall. The juvenile court judge has found Student incompetent to stand trial. He is therefore in a type of limbo since he has not been sentenced and made a ward of the court but has not been released as the juvenile court is waiting for the outcome of the instant due process hearing to determine how to proceed with Student.

In this case, Student has alleged that LACOE denied him a substantive free appropriate public education (FAPE) because LACOE has failed to follow the recommendation of the Los Angeles County Department of Mental Health (DMH), which assessed Student pursuant to a referral from LACOE, to place Student in a residential treatment center (RTC) based upon his extensive mental health needs. Student contends that his mental health needs cannot be separated from his educational needs. He asserts that LACOE is not addressing his underlying mental health problems and that in order to address them, he requires the RTC placement because the mental health counseling he requires as a related service<sup>3</sup> cannot be addressed anywhere but at an RTC. LACOE contends that it is addressing Student's mental health needs at Los Padrinos Juvenile Hall, that Student is accessing his education, and that he no longer displays the compulsive sexualized behavior he had previously displayed before his incarceration. LACOE therefore asserts that Student's does not require placement at an RTC.

This Decision finds that, based on the unique facts of this case, including Student's underlying mental health condition and the testimony of Student's experts, Student's specific mental health needs can only be addressed at an RTC. Student requires a milieu environment where mental health related services are integrated into the daily living environment of the students and where Student can receive family and group therapy, and psychotherapy that addresses his specific mental health issues. Based upon the weight of the evidence, Student requires an RTC placement in order to address his emotional disturbance and therefore to meet his special education needs. This Decision will therefore order LACOE immediately to conduct a search to find an appropriate RTC at which to place Student. This Decision will also order the parties to hold an individualized educational program (IEP) meeting for Student in order to finalize his RTC placement in conjunction with Student's full IEP team.

## FACTUAL FINDINGS

### *Background Information and Events Leading to Student's Incarceration*

1. Student is a 16-year-old young man. As of the time of hearing, he had been in custody at Los Padrinos Juvenile Hall (Los Padrinos) in Los Angeles County since January 2011, based on violating his probation, as will be discussed below. He attends a juvenile court school under LACOE's jurisdiction. Student is eligible for special education services

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<sup>3</sup> In California, related services are also called designated instruction and services. The terms are used interchangeably in this Decision.

as a student with an emotional disturbance and the secondary eligibility of other health impaired.

2. Mother adopted Student when he was about two years old. She also adopted his two biological sisters. One of Student's biological sisters also has mental health and criminal conduct issues. Student and his sisters were put up for adoption because of domestic violence in their home. Mother was first their foster parent. She adopted Student and his sisters because she felt sympathy with what they had gone through in their biological parents' home and because she had grown to love them. Mother also has four biological children. The three older biological children live in Mexico. None of her biological children has mental health issues or has been arrested.

3. Student has displayed behavioral issues since he began living with Mother. Even as a small child he was very serious, uneasy, and aggressive with his toys. He would take the toys apart or otherwise try to break every toy he had.

4. Student attended school in the Hacienda-La Puente school district, where his adoptive family lived. As a young elementary school student, he did not have many friends. He was isolated and aggressive. Student was first found eligible for special education when he was in kindergarten due to speech and language deficits. His primary designation was changed to other health impaired when he was in first grade based upon a diagnosis of attention deficit hyperactivity disorder (ADHD), for which Student's doctor prescribed medication. Student's school records indicate that he had issues with maladaptive behavior since kindergarten when he was counseled for inappropriately touching another student and himself. Although between kindergarten and fifth grade Student did not exhibit any behaviors that were significant enough to be noted by his school, Hacienda-La Puente did begin providing Student with counseling sessions two or three times a month, which continued through his attendance at Hacienda-La Puente. Student also received counseling through other government agencies up to his incarceration. Student, at various times in his life, was on medication for his ADHD and on psychotropic medications to address anxiety and other mental health issues.

5. Student's issues at school re-emerged when he was in fifth grade. During that school year he had approximately 11 incidents at school primarily involving disruptive behavior. His behavior at home was more troublesome. Mother testified that Student began exhibiting sexualized behavior, which included showing his genitals to another boy who was in her foster care, and opening the bathroom door so that one of the little girls in Mother's in-home daycare saw Student masturbating. Eventually, Student's sexualized behavior at home was the cause of Mother losing her daycare license.

6. Student's behavioral issues at school intensified in sixth grade. He was tardy to school numerous times. He was aggressive toward other students. He disrupted class. Student began committing thefts at school, including stealing a bicycle by lying to a school officer that the bicycle was his and that he had just lost the key to the lock.

7. Student's maladaptive behaviors continued in seventh grade, where he had approximately 10 incidents that were noted by his school. The incidents included being disruptive in class (to the point where his teacher indicated she "could not take it any longer"), stealing pens from the school office, shooting his teacher in the back with rubber bands, and being caught at school for possession of fireworks, for which Hacienda-La Puente suspended Student.

8. Hacienda-La Puente conducted a triennial assessment of Student on October 28, 2008, when Student was in seventh grade. It does not appear that the Hacienda-La Puente assessed Student in the area of mental health needs. As a result of the assessment, Hacienda-La Puente found that Student continued to be eligible for special education as other health impaired.

9. Student's sexualized behavior increased in the home environment. He began to have a compulsion to view pornography and attempted to do so at every opportunity. He first used the computer at home to view pornography. When Mother and Student's sisters realized what he was doing, they blocked Student's access to the computer. He then used the television at home to view pornography. When Mother realized what was happening, she blocked Student's access to the television. Student then found out how to use his phone to access pornography. Mother blocked his access to his phone and then had to block access on the phones of everyone in the household because Student was using them as well to view pornography.

10. In the two years or so before December 2009, when Student was assessed by the Orange County Health Care Agency (OCHCA), Student's behaviors at home also included starting fires, leaving home without permission, including leaving through the window at night, and stealing from his family, the church, and the community. Student was basically stealing cell phones and computers so that he could view pornography. Student continued to expose himself and to masturbate at times in front of other children in his home. Sometime during 2009, Mother sent Student to stay with an uncle in Mexico for about three weeks because she felt she could no longer control Student.

11. Student's compulsion to view pornography finally began affecting his school environment. In November of 2009, when Student was in eighth grade, he took his school counselor's computer from the counselor's desk without permission in order to access the internet to view pornography. After being caught and reprimanded, Student then took the school psychologist's computer without permission, took the computer into the school restroom, and by-passed school firewalls to access internet pornography on the computer. Student was suspended for these episodes.

12. Due to Student's escalating sexual behaviors at home and at school, Mother asked Hacienda-La Puente to refer Student for a mental health assessment under AB 3632.<sup>4</sup>

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<sup>4</sup> Special education law provides that therapeutic mental health services are a related service that may be necessary for a student to benefit from his or her education. At the time

Hacienda-La Puente agreed, and referred him to OCHCA for a mental health assessment under the previous version of AB 3632.<sup>5</sup> During the months Student was participating in the assessment process, he on one occasion hid in a classroom after school hours and after everyone had left the campus. He then found a teacher's laptop, and used his own student user name and password to again access pornography. Hacienda-La Puente issued another suspension to Student for this incident.

13. Student's sexualized conduct began to manifest itself in the community as well. At a party attended by members of his family and close friends, Student began masturbating in front of party-goers. Mother quickly removed him from the party. Because everyone attending was a family member or close friend, no one called the police.

14. OCHCA completed its mental health assessment of Student on December 24, 2009. The assessor reviewed Student's school records, interviewed Mother and Student, and had Mother fill out a caregiver questionnaire. The Hacienda-La Puente school psychologist informed the OCHCA assessor that most of Student's maladaptive behaviors were occurring at home. She stated that in school, Student generally was found to be polite and obedient. However, the school psychologist did note that Student was stealing school laptop computers to view pornography. She also noted that he had been suspended because of two incidents of laptop theft, and that Hacienda-La Puente was in the process of evaluating Student for an emotional disturbance.

15. Mother presented a view of Student that was much more negative than did the school psychologist. Mother told the OCHCA assessor that in addition to Student's sexualized behavior at home, and his constant theft of cell phones and laptops to view pornography, Student had academic difficulties and had problems expressing himself. Mother noted that Student was inattentive, hyperactive, and aggressive with other children

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that Hacienda-La Puente first referred Student for a mental health assessment, Chapter 26.5 of the California Government Code (referred to by the parties as AB 3632 for the legislative Assembly Bill that originated the law), set forth a comprehensive system by which a local education agency (LEA), such as Hacienda-La Puente, could refer a special education student suspected of being in need of mental health treatment to a local county mental health agency. There have been significant revisions to Chapter 26.5, which will be discussed below.

<sup>5</sup> Hacienda-La Puente referred Student to Orange County Health Care Agency for the assessment because Student had been adopted from Orange County and had a right to receive mental health services from that county based on the adoption. Neither the Orange County Health Care Agency nor Los Angeles DMH was ever named as a party in this due process proceeding.

and toward property, that he lied, stole things, and tried to break rules. Student was defiant on a daily basis, had trouble eating and sleeping, was anxious and was fearful. Student confirmed in his interview with the assessor most of what Mother had said in her interview and on her questionnaire.

16. The OCHCA assessor found that Student qualified for mental health counseling as a related service through the AB 3632 process because Student's emotional and behavioral problems interfered with his ability to attend school and benefit from his educational program. OCHCA offered mental health outpatient services, medication support services, case management, and rehabilitation services, as related services to Student to address his mental health needs.

17. During the time OCHCA was assessing Student, Hacienda-La Puente began its own assessment to determine if Student qualified for special education eligibility under the category of emotionally disturbed. Hacienda-La Puente school psychologist Jacquetta Perkins conducted the assessment during December 2009 and January 2010. Her assessment, which is not at issue in this case, was comprised of standardized tests (including rating scales by Student, Mother, and Student's teachers), review of Student's records, and interviews with Mother, Student, and Student's school principal. Scores on the assessments indicated that Student was in the clinically significant range for hyperactivity, aggressions, conduct problems, externalizing problems, depression, social skills, study skills, and functional communication. Student was clinically at risk in a number of other areas.

18. Ms. Perkins's interviews with Student's school principal and with Student indicated that Student had compulsions to steal, primarily related to his compulsion to view pornography. Even during the assessment process, Student's compulsions led to him stealing a teacher's cell phone to access pornography. He was found a few days later rummaging through a classroom cupboard trying to find a laptop so that he could again access pornographic materials at school.

19. Student indicated to Ms. Perkins that he was breaking into neighbor's homes to watch television (pornography) to "calm himself." He was using the cell phones and laptops he had stolen to calm himself as well. Student admitted that it was hard for him to control his actions.

20. Ms. Perkins found that because of his compulsive needs for pornography, Student had a difficult time functioning on his school campus. Her assessment results indicated that Student was experiencing signs of anxiety and depression at home and at school. She found that while attempting to reduce his anxiety, Student's compulsive, sensation-seeking behaviors both heightened his anxiety level and gratified him. Ms. Perkins found that Student was getting his sensory needs met by means of his inappropriate conduct because Student did not have coping strategies to deal with the strong emotions he was experiencing.

21. Ms. Perkins concluded that Student appeared to meet the eligibility criteria for a student with an emotional disturbance based on his inappropriate behaviors or feelings under normal circumstances and his general pervasive mood of unhappiness or depression which had been demonstrated over a long period of time, to a marked degree, and which had adversely affected Student's educational performance. Ms. Perkins determined that emotional disturbance was Student's primary disabling factor. She recommended that Student receive counseling services as a related service, that he be taught anxiety reducing strategies, and that his IEP team review where Student's educational placement should be.

22. During the time that OCHCA and Hacienda-La Puente were assessing him, Student continued to have problems at home, including sneaking out of the house by exiting through windows. On January 5, 2010, Student left home through his bedroom window. When Mother realized he was gone, she called the police. The police informed her that they had just received a call from one of Mother's neighbors about a boy entering the neighbor's house through a window. The boy, when discovered, had left the neighbor's house through the window as well. The boy in question was Student. When Student tried to return home through his bedroom window, he discovered it was locked. He then went to a neighborhood park, which is where the police found him. He was cited for the incident and given a court date.

23. Hacienda-La Puente convened an IEP team meeting for Student on February 2, 2010, in order to review Ms. Perkins's assessment as well as the assessment conducted by OCHCA. Both Ms. Perkins and an OCHCA representative attended this meeting. Mother, Student, and other Hacienda-La Puente staff were present as well.

24. Student's IEP team noted that Student had a great deal of difficulty controlling his impulses, that he was obsessive and showed signs of depression. Student informed the team that he often felt a sense of humiliation and rejection and that he had a great deal of fears related to being separated from Mother. These fears led him to obsessive/intrusive thoughts which led him to search for ways to access pornographic materials. The team hypothesized that Student was seeking out pornography to masturbate and find release, thereby lowering his anxiety and lessening his obsessive thoughts. The IEP team determined that Student met special education criteria as a student with an emotional disturbance, and that ED should be his primary eligibility category.

25. The IEP team determined that Student required a small, highly structured educational setting with a high degree of supervision and strong social-emotional and behavioral supports, as well as academic supports. Hacienda-La Puente offered Student placement at its Stimson Learning Center, along with related counseling services. OCHCA offered Student the AB 3632 services described in paragraph 15 above. Mother agreed to this IEP offer.

26. In approximately April 2010, Student was placed on probation by the juvenile court based on the incident where he broke into a neighbor's house. As a condition of his probation, Student was required to wear a monitoring ankle bracelet that indicated his

whereabouts. He had probation restrictions that prohibited him from leaving his house except to attend school. The restriction required that Student remain inside his home; he could not go out on the patio or into his yard.

27. In spite of his new educational placement, the related school counseling services, and the additional counseling services from OCHCA, Student continued to exhibit the same behaviors. He continued to steal cell phones and laptops in an attempt to access pornography. He continued to try to access pornography at home. On one occasion, he left school without permission and stayed out all night. The following morning Student went to a gas station to ask for help; a man at the gas station took Student home with him rather than calling the police. Student was gone for a few days before the man brought him home.

28. Finally, in an incident that occurred in January 2011, Student decided to remove his monitoring bracelet and leave home without it. He was gone for a few hours. Student was ultimately arrested because he broke probation by removing the bracelet and leaving his house. The juvenile court placed him at Los Padrinos. The court subsequently determined that Student was not competent to participate in the legal proceedings brought against him and found Student incompetent to stand trial, a status which remained in effect as of the due process hearing in this matter.

#### *LACOE Enrollment and Student's March 16, 2011 IEP*

29. Student was enrolled at the Los Padrinos Juvenile Hall School sometime after his arrest in January 2011.<sup>6</sup> The juvenile court school is operated by LACOE, which is the local educational agency that administers the juvenile court schools in Los Angeles County. Pursuant to Student's IEP from Hacienda-La Puente, Los Padrinos placed Student in a special day class (SDC), which consisted of a highly structured educational program with a low student to teacher ratio. His educational program was designed to assist him in passing the California High School Exit Exam and to complete the necessary credits to graduate from high school. Student's first SDC teacher, Ike Okonkwo, was not available to testify at the hearing in this matter.

30. On March 16, 2011, LACOE convened an IEP meeting for Student to address his transition to Los Padrinos. The IEP team included Student, Mother, a Los Angeles County DMH representative, a LACOE school psychologist, and several administrators and educators from LACOE. An OCHCA representative participated by telephone.

31. A representative from the Los Angeles County Probation Office was also present. She indicated that Student was behaving satisfactorily in his housing unit. Student's DMH facility counselor at Los Padrinos indicated that although Student was guarded and shy, he was cooperative and was actively participating in his counseling sessions. She

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<sup>6</sup> Neither party presented evidence of the exact date on which Student was placed at Los Padrinos.

indicated that Student was making progress in his therapy and was working on his coping skills.

32. The IEP team reviewed Student's present levels of performance and developed goals for Student. The team developed academic goals in the areas of language arts, English language development, and mathematics. The team developed a transition plan with goals as well.

33. However, with regard to Student's primary disability of ED, the only goal the team developed was in the area of behavior. The behavior goal noted that Student presently did not interfere with other students and was not attempting to take their belongings and generally sought direction from his teacher on what to do in class. The annual behavior goal was for Student to "engage in appropriate sensation seeking behavior and refrain from entering into others property and taking things that did not belong to him 5 out of 5 times per teacher's tallied observations." The only person responsible for implementing this goal was Student's SDC teacher.

34. Although Student's previous IEP had included a counseling goal, the IEP team on March 16, 2011, determined that Student presently did not exhibit anxiety or problems in his classroom or living unit. It therefore did not develop a new counseling goal for him.

35. LACOE's final IEP offer to Student was to continue him in his SDC class with the related services of counseling only offered on a consultation basis, with a reference to the possibility of future direct services if Student's behaviors began to interfere with his learning. DMH also offered to continue the 45 minutes a week of counseling services it had been providing to Student. DMH also offered Student and Mother weekly family therapy sessions. However, as explained in a later IEP, the type of family therapy sessions available at Los Padrinos only addressed things such as vocational and educational transition issues and did not address core mental health needs of the juveniles incarcerated there.

36. There is no reference in the March 16, 2011 IEP to Student's underlying emotional disturbance which manifested itself as sexually compulsive behavior and no discussion as to how this behavior would be addressed. However, the OCHCA representative present at the IEP meeting did indicate that she felt Student's lack of overt negative behaviors at Los Padrinos was only due to his incarceration and the fact that acting out sexually or acting to procure the means to access pornography while in Juvenile Hall would incur negative consequences. Based on OCHCA's concerns, Student's IEP team agreed that it was appropriate to refer Student for another mental health assessment under AB 3632. The team referred the assessment to Los Angeles County DMH, which had responsibility for providing mental health services to juveniles incarcerated in Los Angeles County. Mother signed the referral.

*DMH Assessment by Sandra Bautista-Lechner*

37. Student's AB 3236 assessment was assigned to DMH Psychiatric Social Worker II Sandara Bautista-Lechner, who completed her initial assessment on June 23, 2011. Ms. Bautista has a master's degree in Social Work from the University of Southern California. She is a Licensed Clinical Social Worker and has been working as such for over 12 years. Ms. Bautista has completed between 800 and 900 mental health assessments for educational purposes during her career, and attended an equal number of IEP team meetings. She was previously a team leader for DMH's AB 3632 division and presently manages DMH's Pasadena office. Ms. Bautista has also worked in private practice with children and families who were victims of abuse. As a clinical social worker she is also qualified to provide long and short term therapy to individuals and families.

38. Ms. Bautista testified that there was no difference between an assessment for a Juvenile Hall resident and a student living at home. The purpose of the assessment is to provide the IEP team with a template for helping the child being assessed to perform better at school. She recommends residential placement if she finds it warranted and outpatient mental health services where those are warranted.

39. Ms. Bautista's assessment consisted of a careful review of Student's records, including his IEP's and prior psychoeducational and mental health reports, and assessment summaries from Orange County. She also interviewed Mother and Student and spoke with a school psychologist from Student's prior educational placement at the Stimson Learning Center. Ms. Bautista tried to reach other mental health providers of Student but was not successful. She did not attempt to speak with Student's teacher at Los Padrinos or observe Student in his school setting.

40. Ms. Bautista noted that Student had received school-based counseling services from 2001 through 2008 but that the counseling had done little to help him. The Hacienda-La Puente school psychologist indicated to Ms. Bautista that Student had had a few incidents at school involving his need to access pornography, but the psychologist did not think it was significant. Rather, she indicated that although Student had the incidents, and had run away once from school, the school had been trying to help him and she believed that the counseling Student had received was helpful.

41. The records that OCHCA provided to Ms. Bautista included its reassessment of Student. The reassessment demonstrated that Student continued to exhibit problems at home as well as at school. OCHCA indicated that Student's problems continued to include anxiety, depression, oppositional-defiant behaviors, property destruction and aggression toward others, fire setting, sexually acting-out behaviors of pornography, masturbation, and exhibitionism.

42. Ms. Bautista interviewed Mother as part of her assessment process. Mother indicated that she was most concerned with Student's obsession with pornographic materials and his complete disregard for others. Mother informed Ms. Bautista that she had caught

Student masturbating and that he demonstrated no embarrassment in spite of Mother's attempts to tell him that he could not masturbate in public. Mother also informed Ms. Bautista that Student had masturbated in front of other people. Mother further told her that Student had admitted to her that much of his conduct, such as stealing computers, had to do with his desire to watch pornography. Student told Mother that he could not control his feelings or understand the consequences of his pornography-seeking behaviors. Mother's fears were that, although Student might be able to refrain from his behaviors while incarcerated because he was afraid of the consequences if he did not control himself, he would be unable to maintain the control once he returned home. Mother expressed to Ms. Bautista, as she expressed during her testimony at hearing, that she was afraid that Student would be arrested again or even injured if he returned to trying to break into other people's homes in order to view pornography once he was released from Los Padrinos.

43. Ms. Bautista also interviewed Student. Other than indications of hyperactivity, Student did not present any negative affect. He was friendly and cooperative, spoke spontaneously, and was fully cognizant of the purpose of his meeting with Ms. Bautista. Although Student appeared anxious, he presented no evidence of thought disorder, delusions, or hallucinations. However, he also informed Ms. Bautista that he could not stop his obsession with pornography. He said that he would find it anywhere he could if he was released from Juvenile Hall.

44. In spite of Student's lack of negative affect when she interviewed him, Ms. Bautista ultimately concluded in her report that Student required a residential placement because LACOE was unable to provide Student with the appropriate related mental health services. She concluded that Student required family therapy, group therapy, and the type of psychotherapy that presently was not available at Los Padrinos. Her conclusion was based upon Student's history of long-term outpatient counseling, including several years when he had received psychotropic medications, which had not resulted in any diminution of his behaviors. She found that despite the counseling, Student's sexually inappropriate behaviors had increased as he grew older. Ms. Bautista noted that Student's behaviors had interfered with his educational progress and that his present incarceration was due to his having broken into a home in order to view pornography. Ms. Bautista noted that Student had not learned to cope with his emotions and that when overwhelmed, he acted impulsively. Student's compulsion with accessing pornography as a way to regulate his anxiety put Student at risk of being hurt and of hurting others. None of the mental health interventions he had received had addressed the underlying reasons why he needed the pornography, what the triggers for his compulsion were, or how to control his impulses for it.

45. Ms. Bautista stated at hearing that keeping Student locked up would not resolve his issues. She could not determine if his issues would dissipate as Student matured. She acknowledged that his clinical picture was murky and complicated. But she was adamant that Student was in desperate need of help because his core issues had never been addressed and were not being addressed by the therapy LACOE could provide on site at Los Padrinos. Ms. Bautista found that Student required a high level of structure, support, consistency, and psychotherapeutic interventions on a frequent and consistent basis, as well

as family therapy and group therapy. Family therapy was necessary to address Student's issues at home that are impacting his mental health. Group therapy was important since it is targeted and geared toward dealing with problems on a peer level, with peers providing insights into each other's problems and help deciding how to deal with issues. It also demonstrates to the participants that they are not alone in having their mental health issues. Neither family nor group therapy is available to Student, or any juvenile, at Los Padrinos.

46. Ms. Bautista stated that although Los Padrinos provides structure, it does not provide the therapeutic environment with integrated mental health services that Student required and that an RTC would provide. The therapeutic environment, which permeates the RTC structure on a 24-hour basis, would provide Student with the tools to be able to re-integrate into a normal school environment. Every aspect of Student's life at the RTC would be a therapeutic setting, including school, his housing unit, and meals. The RTC would provide a setting where Student could express his emotions in a safe environment where interventions could happen immediately when necessary so that Student could learn self-regulation. Student needed to learn how and why he had his sexual compulsions and how to respond to them. Student was able to control his impulses at Los Padrinos because of the structure and the threat of consequences. Although Student's SDC classroom provided the structure and low student to teacher ratio Student required to address his academic deficits, Student was not learning the reasons for his impulses and how to control them for the long-term. This was because the underlying reasons for his compulsions and impulses were not being addressed by the mental health services available at Los Padrinos.

47. Ms. Bautista was an impassioned and convincing witness at hearing. She was intelligent, thoughtful, and appeared to have a thorough knowledge of her field and of Student's mental health issues. She was fervent and steadfast in her contention that Student required an RTC placement at the time she assessed him and continued to require one as of the time of the hearing. Her recommendation was informed by the fact that Student's mental health issues were persistent and had not been resolved in spite of years of outpatient mental health counseling services. None of the interventions that either the school district, OCHCA, or Student's other mental health professions had provided to him had been effective. From a clinical perspective, the fact that Student was repeatedly breaking into other people's homes in the middle of the night to view pornography and was stealing phones and laptops at school was of the most concern to Ms. Bautista because it indicated that Student's actions were compulsive and unchecked.

48. LACOE argues that Ms. Bautista's assessment is deficient because it did not include all aspects of an assessment required under California law. Ms. Bautista did not interview Student's teachers or observe Student in class and did not include any standardized testing. LACOE's arguments are ultimately unpersuasive for a variety of reasons. First, Ms. Bautista assessed Student on recommendation from LACOE; she did exactly what was expected of her. More significantly, her recommendations do not rely on Student's behaviors, or lack thereof, while at Los Padrinos. As discussed below, Student's lack of acting out while at Los Padrinos is due to the structured environment of his incarceration at Juvenile Hall, which includes constant monitoring by probation officers even while in class,

and his inability to access pornography while incarcerated. Finally, LACOE's criticisms of Ms. Bautista's assessment are unpersuasive because LACOE has not itself assessed Student. LACOE's position that Student does not require an RTC placement is based solely on observations of Student in his present educational environment at Los Padrinos. It is not based on Student's educational history or any of his past or present mental health needs. Ms. Bautista's assessment was based on a view of Student's total needs. For these reasons, her failure to observe Student at school or speak with his teachers does not detract from the overall validity of her assessment or her recommendations for RTC placement.

49. At the time of Ms. Bautista's assessment report in June, 2011, DMH was responsible for implementing a residential treatment center placement for those Juvenile Hall students found in need of one. Ms. Bautista's report indicated that DMH would implement such a placement if the [juvenile] court agreed to it.

50. Ms. Bautista also recommended four treatment goals for Student: a) decreasing his impulsivity for lying and stealing; b) assisting him to develop and practice appropriate ways to manage aggressive urges; c) stabilizing his moods and decreasing anxiety; and d) increasing Student's self-esteem.

51. As discussed below in this Decision's Legal Conclusions, California law changed on July 1, 2011. Responsibility for assessing the mental health needs of special education students and for determining the need for and then providing them with necessary mental health services including, if necessary, with residential placements, reverted fully to the local educational agencies responsible for a given student's education. In Student's case, that responsibility reverted to LACOE.

#### *July 27, 2011 IEP Meeting*

52. LACOE convened an addendum IEP team meeting for Student on July 27, 2011, in order to review Ms. Bautista's assessment report and recommendation. In addition to Student and Mother, IEP participants included Student's special education teacher at Los Padrinos; a LACOE school psychologist; a probation representative; Maya Alvarez, a DMH psychiatric social worker who was providing counseling to Student; Paulette Koss, the Assistant Principal at Los Padrinos; a representative from Hacienda-La Puente; and Ms. Bautista, who appeared by telephone,

53. The general consensus of each of the LACOE IEP participants was that Student was doing well at Juvenile Hall, from both a probation and school perspective. The probation representative indicated that Student had not had any significant issues in his housing unit and was "running a good program." Student's special education teacher at the time indicated that Student followed instructions in class, was compliant, and had made substantial progress on his IEP goals. Student's LACOE psychologist at the time, who did

not testify at hearing, indicated that Student had grown a lot and that he had no current behavior problems.<sup>7</sup>

54. The LACOE members of Student's IEP team considered the fact that the probation department, Student's psychologist at LACOE, and Student's SDC teacher all believed that Student's behaviors were under control, and that he was showing educational progress toward his academic goals at school. Although LACOE agreed that Student's present success at school was due to the structured nature of the juvenile hall setting, LACOE determined that Ms. Bautista's recommendation for an RTC was misplaced. Therefore, in spite of Ms. Bautista's fervent recommendation for the RTC, LACOE's offer to Student was continued placement in the Los Padrinos SDC. LACOE then specifically added the related service of individual counseling for Student, but only at the rate of two, 30-minute sessions a month. The IEP team did not develop any goal for Student that related to the additional counseling services that LACOE now offered. The IEP team did not modify any of the separate DMH services Student was receiving.

55. Mother was still concerned over the lack of an RTC placement for Student. She requested that LACOE convene another addendum IEP meeting, with Ms. Bautista present in person, as well as with the participation of a representative from Student's school district of residence. LACOE agreed to schedule the meeting.

*September 7, 2011 IEP Meeting*

56. Ms. Bautista's original assessment indicated that LACOE's referral to DMH included statements that Student was argumentative, impulsive, and had attention difficulties. She revised her report on September 5, 2011, after Paulette Koss, the Assistant Principal at Los Padrinos, wrote to inform Ms. Bautista that those statements were in error and that LACOE had instead indicated that Student was not exhibiting anxiety problems in school or his living unit. LACOE had actually stated that Student was compliant, cooperative, and respectful. Ms. Bautista revised her report to conform to Ms. Koss's concerns, but did not change any of her recommendations for Student. Her revised report was provided to Student's IEP team prior to his next addendum IEP meeting, held on September 7, 2011.

57. At the IEP meeting Ms. Bautista continued to recommend that Student required an RTC placement because of his underlying impulsive behaviors of lying, stealing, and breaking into people's homes. She was concerned Student had also had compulsive issues with pornography and was not able to explain his actions or why he behaved the way he did.

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<sup>7</sup> Although Student's March 16, 2011 IEP indicated that he was only going to receive consultative counseling services by LACOE, Student's LACOE psychologist at the July 27, 2011 IEP stated that Student was "compliant in counseling," implying that he was receiving direct counseling services. This psychologist did not testify at hearing and the discrepancy was not explained by either of the parties.

58. The LACOE IEP team members, however, continued to believe that an RTC placement was not necessary to meet Student's needs. The IEP team again noted that Student was making academic progress, that he was compliant in class and in counseling, and that he had no behavior issues in his SDC classroom or in his housing unit. DMH clinician Mayra Alvarez, who was seeing Student on a weekly basis, agreed that Student benefitted from structured setting he was in at Juvenile Hall.

59. The LACOE IEP team members determined that Ms. Bautista's assessment recommendations could be addressed through a counseling goal. The team developed a goal to have Student learn coping strategies, such as asking for a time out, verbalizing feelings to a supportive adult, use of relaxation techniques that could be used to deal with anxiety in the classroom. Student and his school psychologist were responsible for implementing the goal. No group therapy or family mental health counseling was offered to Student and no reference was made in the goal to Student's sexual compulsions or how those sexual compulsions could be addressed. The IEP team did not increase Student's counseling sessions; they remained scheduled for two, 30-minute individual counseling sessions a month. Ms. Bautista disagreed with the LACOE IEP team members that her recommended goals could be addressed through counseling sessions at Juvenile Hall, although she did agree that the counseling would benefit Student.

*Events Subsequent to Student's September 7, 2011 IEP Meeting*

60. Student continued to be confined at Juvenile Hall and to attend school there. In mid-September 2011, he transferred to the SDC classroom of LACOE teacher Hedy Grosshandler, who testified at hearing. Ms. Grosshandler has been employed by LACOE for over 30 years. She has a master's of science degree in Special Education, with an emphasis on teaching the emotionally handicapped, and has various teaching credentials. She was an impressive witness as her concern for her students and her dedication to her work with special needs students was readily apparent during her testimony.

61. Student was typically nice, eager to please, and motivated to learn in Ms. Grosshandler's classroom. Occasionally, Student misbehaved. He would either talk back to Ms. Grosshandler or be otherwise disrespectful. Two or three times, Student left class abruptly and without permission. A couple of other times, Ms. Grosshandler asked him to leave because of his disrespectful attitude, and Student was then escorted back to his housing unit by a probation officer. However, Student was generally compliant or easily redirected when he was not feeling up to par. Ms. Grosshandler included many positive reinforcements, such as praise, redirection, and incentives, in her SDC class and Student generally responded positively to them.

62. Most of the occasions when Student acted out in Ms. Grosshandler's class occurred toward the end of 2011 and the beginning of 2012. Ms. Grosshandler questioned Student as to why he was misbehaving. Student admitted to her that Mother had told him to misbehave in the classroom. Student also informed Tony Meehleis, Student's present LACOE psychologist, that Mother had suggested that he misbehave in order to support the

request for RTC placement. At hearing, Mother was asked if she had made those suggestions to Student. She denied that she had done so. However, her demeanor while answering the questions was stiff and somewhat unresponsive, and therefore her denial was not convincing. Given that Student did not begin engaging in any type of misbehavior at Juvenile Hall until he had been there approximately 10 to 12 months, and the fact that his behaviors were unrelated to his underlying emotional disturbance, the testimony of Ms. Grosshandler and Mr. Meehleis that Student admitted being prompted by Mother to misbehave was more persuasive than were Mother's denials. Student did not testify at hearing to dispute Ms. Grosshandler's and Mr. Meehleis's contentions. However, as will be discussed below, whether Student misbehaved because he was prompted to or whether it was of his own volition, is not dispositive of his need for RTC placement.

63. Student progressed academically in Ms. Grosshandler's class. He did not engage in any of the extreme conduct, such as sexually acting out, that he did at home or in his previous classroom at Hacienda-La Puente. He did not attempt to steal any cell phones or any computers or try to access pornography on any of the computers on which the students in class were allowed to work. Student has not engaged in any other type of conduct in the classroom that would prompt Ms. Grosshandler to believe that he required an RTC placement as have other students of hers. Because of Student's lack of significant misbehavior in class and the academic progress he has been making under her tutelage, Ms. Grosshandler does not believe that Student requires an RTC placement.

64. At any given time, there are from one to four probation staff members in Ms. Grosshandler's classroom to maintain the peace. The number of probation staff is determined by whether any of the juveniles in the class are considered high risk and therefore need more security monitoring. Student has never required the additional security.

65. Student continued to receive outpatient counseling services from DMH, which Mayra Alvarez provided. Ms. Alvarez is social worker. Her services are provided as part of Student's incarceration and are neither part of his educational program nor provided pursuant to the AB 3632 referral and assessment process. She is not qualified to make educational recommendations for students. She has never reviewed Student's educational records or his IEP's. She has never observed Student in the classroom and has minimal information regarding what Los Padrinos provides to juveniles through its juvenile court school. Ms. Alvarez has never assessed Student and had no opinion at hearing as to whether Student required an RTC placement.

66. Ms. Alvarez's counseling sessions with Student focused on reducing his mood swings. She was not attempting to implement any IEP goals. However, she felt that Student needed more therapy than what she could provide, including family therapy. Although family therapy had previously been offered to Mother, Ms. Alvarez indicated that neither family therapy nor group therapy were available through DMH at Los Padrinos. She felt that Student required family therapy but did not know if he needed group therapy.

67. It was readily apparent during her testimony that Ms. Alvarez did not have the knowledge, educational training, or skill to address Student's underlying emotional disturbance. Her services were provided to Student through the juvenile court process, and were provided to all juveniles in the system regardless of their underlying mental health needs. Her counseling services were not designed to address Student's significant mental health issues, and, in fact, provided no more than minimal benefit to him.

68. School Psychologist Tony Meehleis began providing counseling services to Student in mid-September 2011. Mr. Meehleis has a master's degree in School Psychology, an administrative credential, and a multi-subject teaching credential. He has been a school psychologist for approximately 10 years, the last six of which have been at LACOE.

69. Mr. Meehleis does not believe that Student requires an RTC placement. Student is not acting out in class or in his housing unit. Mr. Meehleis has worked with many students who do require RTC placement; those students are out of control both outside and inside of Juvenile Hall. He began giving Student weekly counseling sessions which lasted 30 minutes. Mr. Meehleis also observes Student in class almost daily. Student's behavior in class, while not exemplary, has only included a few episodes of misbehavior which amounted to talking back to his teacher or being disrespectful. There was only one occasion in January 2012 that Student engaged in more extreme behavior. Student got into a fight and walked out of the classroom. Probation staff placed Student on a higher security level because of the fight.

70. Mr. Meehleis also testified that Student had told him during counseling sessions that he was "hearing voices" and had some suicidal thoughts. However, the voices had soon stopped. Mr. Meehleis believes that his counseling sessions have become more productive because Student began to open up to him and share his feelings more. Mr. Meehleis emphasized that during counseling sessions, Student has stated that he does not need an RTC placement but will do it to please Mother. Student has also stated that he would rather go home than go to an RTC. Student also told Mr. Meehleis that he has solved his pornography problem and that he would throw away any pornography magazine given to him. Mr. Meehleis believes that Student's lack of pornography-seeking or other sexualized behaviors at Juvenile Hall are strong indicators that he does not require RTC placement while at Los Padrinos.

71. However, Mr. Meehleis also acknowledged that neither he nor any other LACOE psychologist has assessed Student since Student arrived at Los Padrinos. Mr. Meehleis has never evaluated any student to determine if he or she required an RTC placement but feels that DMH has been too liberal about recommending RTC placements in the past.

72. Significantly, Mr. Meehleis acknowledged that he is not addressing Student's compulsions with regard to pornography during his counseling sessions with Student. Mr. Meehleis indicated that it was DMH's place rather than his to address those underlying mental health issues from which Student suffers. Mr. Meehleis stated that his only

responsibility is to deal with Student's "school issues." Mr. Meehleis's testimony was ultimately not as persuasive as was the testimony of Student's experts for a number of reasons. First, his testimony did not acknowledge the underlying bases of Student's mental health issues. Because he is not trained to provide in-depth psychotherapy, Mr. Meehleis is not providing to Student the degree of therapy he requires in order to address and, if possible, suppress his addiction to pornography. Mr. Meehleis's testimony indicates that he does not comprehend the depth of Student's disorder, how it ultimately affects his education, and that merely treating Student's mood fluctuations does not begin to address the impetus behind the behaviors which resulted in Student's designation as emotionally disturbed. Finally, the persuasiveness of Mr. Meehleis's opinions and recommendations was undermined by the implication in his testimony that Student's compulsion for pornography was "cured" merely because Student had stated that he no longer believed he had a need to access the pornography. Mr. Meehleis offered no credible basis for this implication. The testimony of Ms. Bautista and, as discussed below, of Student's expert Dr. Schnel, indicates that Student's addiction may be suppressed while he is incarcerated, but has not been extinguished.

*November 21, 2011 IEP Meeting*

73. LACOE decided to convene an IEP meeting for Student on November 21, 2011, in order to discuss implementing a behavior support plan (BSP) for him. The BSP was developed to address some of the defiant behaviors, such as talking back, which Student had been engaging in during class. The IEP team believed Student's behavior was the result of his desire to avoid class work. The goal of the plan, as had been the counseling goal earlier developed by the IEP team, was to teach Student social coping strategies. The BSP primarily consisted of a visual cuing system to be used by Student's teacher and other school administrators to indicate to Student that he should take time out from his class work. The other reinforcers, such as praise and one-on-one attention, appear to be formalization of methods Ms. Grosshandler was already utilizing in class.

74. Although Mr. Meehleis was not able to attend this meeting, Ken George, Student's previous school psychologist, did attend. He indicated to the team that he did not believe Student had any psychological problems whatsoever and that some of his behaviors might be exaggerated. However, both Ms. Bautista and Ms. Alvarez, who attended this meeting as well, disagreed with Mr. George. Ms. Bautista again opined that Student was not getting the services he needed. Ms. Alvarez also stated that Student needed more intensive therapy than what he was then receiving. She also added that she could not say for sure if Student would still have sexualized behaviors because he did not have access to that (pornography) at Los Padrinos. The IEP team acknowledged that family therapy to address Student's mental health issues was not available at Los Padrinos.

75. Ms. Alvarez would not acknowledge at hearing that Student required an RTC placement. However, at the November 21, 2011 IEP meeting, she concurred with Ms. Bautista, Student's attorneys, Student himself, Mother, and an educational consultant from the mental health court (who did not testify at hearing) that Student still required an RTC placement.

76. The LACOE IEP team members continued to emphasize that Student was accessing his education at Los Padrinos, was progressing toward his goals, and did not exhibit any behaviors in class that could not be addressed by his teacher and through a BSP. LACOE agreed to increase Student's counseling sessions with his school psychologist to once a week, for 30 minutes each session, rather than the twice monthly sessions he had been receiving. However, LACOE continued to believe Student did not require placement at an RTC. LACOE therefore again offered placement to Student in an SDC classroom.

*February 1, 2012 IEP Meeting*

77. LACOE convened Student's annual IEP team meeting on February 1, 2012. The team noted that Student continued to require specially designed instruction in order to access his education and that such a classroom was presently the least restrictive environment for him. The team noted that Student was accumulating high school credits at Los Padrinos, was completing his school work, was passing his classes, and was meeting some of his academic goals.

78. The team noted that Student did not appear to have met his coping strategy goal in spite of the increase in counseling sessions with the school psychologist. The team recognized that Student continued to need behavior support through counseling and a BSP; LACOE therefore developed another counseling goal for Student which was similar to his previous counseling goal, and proposed another BSP along the lines of Student's previous BSP. LACOE's offer of placement and services was the same as in Student's previous IEP's: placement in an SDC at Los Padrinos, one, 30-minute counseling session a week with a school psychologist, and DMH services twice a month. LACOE did not offer Student any family or group counseling sessions, and did not address at this IEP meeting the mental health issues underlying Student's designation as an emotionally disturbed student.

79. LACOE did not administer a mental health assessment to Student in preparation for this annual IEP meeting. It had not administered any mental health assessments to Student as of the hearing in this matter.

*Testimony of Student's Expert, Dr. Jack Schnel*

80. At hearing, Student presented the testimony of Dr. Jack Schnel in support of Student's contention that LACOE should have followed Ms. Bautista's recommendation for RTC placement. From 1972 to 2006, Dr. Schnel was a school psychologist with the Palos Verdes Peninsula Unified School District. He presently maintains a private education and counseling psychology practice which includes providing individual, group, and family counseling to adults, families and children, and conducting psycho-educational assessments of adults and children. He has maintained his private practice since 1976. Dr. Schnel was also an adjunct faculty member at California State University, Dominguez Hills from 2000 to 2006.

81. Dr. Schnel has extensive academic credentials and certifications. He has a master's degree in Educational and Counseling Psychology from the University of Southern California, and a doctorate in Educational and Counseling Psychology from the University of San Francisco. He is one of about 10 professionals in California recognized as a Fellow of the American Academy of School Psychologists and is also a Diplomate of the American Board of Professional Psychology and the American College of Forensic Examiners. Dr. Schnel is also a Nationally Certified School Psychologist, a California Licensed Psychologist, has a Marriage, Family and Child Counselor license, an Educational Psychologist license, and a Student Personnel Services credential and a California teaching credential. Dr. Schnel's education and experience indicate his extensive background in school and educational psychology as well as his background in clinical psychology. For the majority of his career, Dr. Schnel was a school psychologist assessing and treating students' mental health issues. He also taught students in public and private schools, specializing in the teaching of learning disabled and emotionally disturbed students. Dr. Schnel has also been on the staff of various hospitals, working in adolescent psychiatric units.

82. Dr. Schnel has conducted thousands of assessments of students, approximately 300 to 400 of which were for the purposes of determining the need for an RTC placement for male students. As a school psychologist, he participated in the decision of whether to place students at RTC's or in alternative placements to address mental health needs. As a private consultant, Dr. Schnel has been hired by families and by school districts. Based upon his expertise, various school districts have hired him specifically to review and make recommendations on whether an RTC placement was warranted, and, if so, to recommend which RTC would best meet the student's needs.

83. Dr. Schnel initially rejected Student's case but finally accepted it after conducting a thorough and detailed review of all of Student's records because Student's case intrigued him. Student's pornography compulsion is not a high-frequency pathology for someone of Student's age. Dr. Schnel had never seen another youngster of Student's age with a pornography addiction. Dr. Schnel was initially confused as to why Student was incarcerated in Juvenile Hall because he did not appear to be a delinquent. Importantly, Dr. Schnel's review of Student's records appeared to indicate to him that Student's primary mental health issues had never been addressed.

84. Dr. Schnel observed Student in his classroom at Los Padrinos on February 3, 2012, the same day on which he administered standardized tests to Student. A substitute teacher was present; Dr. Schnel was therefore unable to observe Ms. Grosshandler's interaction with Student. There were two uniformed probation officers positioned in the back of the classroom. Two officers were present because another student in the class was actively suicidal. The presence of the officers emphasized the jail environment of Los Padrinos. Dr. Schnel noted that there were eight or nine other students in the class and that they seemed to be "rougher" than Student, who appeared to be intimidated by the rough milieu of Los Padrinos. Ms. Koss informed Dr. Schnel that Student had been at Los Padrinos longer than had most of the other juveniles incarcerated there. To Dr. Schnel, it

appeared that the system was merely warehousing Student and that alone was a basis for a finding that Student was inappropriately placed.

85. Dr. Schnel administered two standardized tests to Student. He administered the Millon Adolescent Clinical Inventory (MACI), which consists of 160 true/false questions. Dr. Schnel believes that the MACI is an amazingly accurate test for identifying emotional discomfort or social difficulties in adolescents. The test results are evaluated in light of the adolescent's demographic and situational factors. In Student's case, Dr. Schnel acknowledged that Student's responses to the MACI test questions might be exaggerated, which had to be considered when interpreting Student's test scores. None of LACOE's witnesses challenged Dr. Schnel's choice of testing instruments or his test results.

86. Dr. Schnel found that Student's responses to the personality pattern sections of the MACI indicated that Student was emotionally impoverished, sad, and introversive. Student was likely to relate to others in a flat, colorless way, exhibiting a lack of social initiative. Dr. Schnel found that, although Student might assume a peripheral isolated role in school and social relationships, he nevertheless has a strong need to depend on others. Dr. Schnel also found that Student possibly saw himself as somewhat weak and unassertive. Student was often depressed or morose; beneath his restrained, if not apathetic exterior, Student likely had intense and contrary feelings of discontent and unhappiness. Since Student was so unengaged from normal adolescent aspirations and peer relationships, Dr. Schnel surmised that Student might drift into an increasingly troublesome pattern of peer isolation and familial dependency.

87. The MACI utilizes the Grossman Personality Facet Scales to pinpoint specific personality processes that underlie the scale evaluations. Student demonstrated a pattern of disparaging his memories and achievements, intentionally aggravating and subverting positive feelings, and transposing favorable emotions and events into their least attractive opposites. Student also demonstrated a broad-based social anxiety and fearful guardedness. He desired to be accepted but had a deep hesitancy owing to the anticipation of humiliation and rejection. Student also had a tendency to restrain his personal attitudes and feelings and demean his own convictions and opinions. Student further had an indifference to the behavior and feelings of others, which was evident by his few close relationships, minimal "human" interests, and limited personal involvement in school or family settings. Student required management and treatment oriented toward modifying these negative personality features.

88. Student's expressed concerns were also part of the MACI questions. Student felt somewhat aimless and undirected. His responses on the MACI indicated global dissatisfaction with himself. Student felt distress viewing himself and found minimal acceptance from others. He felt strong peer rejection and viewed his family life as troubled. Student reported being victimized by adults in his childhood and harbored anger and confusion about the incidents.

89. Student's responses on the MACI indicated that he had acute distress over many aspects of his life and his future. He also had suicidal ideations, at least in the past, and demonstrated significant emotional isolation. Student's MACI scores indicated that he might have schizoid and self-defeating personality traits with avoidant and antisocial features. Student also demonstrated dysthymic disorder, possible depressive disorder, and a disruptive behavior disorder.

90. Dr. Schnel also administered the Achenbach assessment to Student. The Achenbach is composed of questions which are answered by students, parents and teachers. Dr. Schnel gave a set of the teacher's scales to Ms. Koss so that she could ask Student's teacher to respond but he had not received them back as of the day he testified at hearing. The Achenbach scales are used to determine externalized and internalized behaviors. The responses to the Achenbach indicate how the examinee is thinking and feeling, which will drive the type of mental health interventions the examinee needs. Student's responses on the Achenbach indicated that he saw himself as more anxious and depressed than other adolescents his age. Student's responses indicated he was withdrawn and depressed, and that social issues were a primary concern as well.

91. Based upon the Student's responses on the MACI and the Achenbach, a review of Student's school records, and Student's mental health treatment history, Dr. Schnel concluded that Student definitely required an RTC placement because Student's educational needs were intertwined with his mental health needs and therefore were indistinguishable from them. Dr. Schnel opined that outpatient mental health services would not be effective for Student because it would not result in Student being able to generalize his problems. This was evident based upon the fact that Student's many years of counseling had no positive effect on his issues. He had had outpatient therapy as well as counseling as a related service at school but still had significant depression and anxiety.

92. Dr. Schnel concluded, based about his review of Student's past records, his interviews with Student, and the results of the assessments, that an RTC environment presently is the only way Student's mental health needs can be addressed. The RTC would eliminate Student's isolation by creating liasons with other students. It would provide an effective way for Student to deal with his anxiety and depression, which were probably the underlying cause of his compulsion to access pornography. Although Student could be kept from acting on his addiction while at Los Padrinos due to the fact he was incarcerated and under the constant watch of probation staff, his behavior was merely being contained but was not being addressed. Although Student received weekly therapy from LACOE, he had no means of following up on the therapy between sessions, and the mental health counseling he was receiving from both LACOE and DMH was not the type of psychotherapy Student required in order to address his significant mental health needs. Student's mental health issues also required family and group therapy, neither of which was available to him at Los Padrinos.

93. Although Student's IEP's attempted to address his anxiety, Dr. Schnel opined that it was not enough to develop a goal to address anxiety because Student's problems were

much too severe to be addressed solely through a half hour of counseling provided by a school psychologist. He stated that no one at Los Padrinos was addressing the underlying reasons for Student's incarceration: his addiction to pornography. Most school psychologists are not trained to do in-depth psychotherapy and school-based counseling is not designed in any case to be a substitute for psychotherapy. Student's IEP counseling goal simplified his needs and did not begin to address the core of those needs. Because of the overwhelming and pervasive nature of Student's mental health problems, they could only adequately be addressed in an RTC with a milieu environment, where Student's mental health issues would be treated during every aspect of Student's day. At the RTC, mental health services would include family and group therapy as well as psychotherapy and counseling. In Dr. Schnel's opinion, a few hours a month of counseling services were simply not enough to address Student's complex mental health needs.

94. In summary, Dr. Schnel opined that Student's mental health issues are not being addressed at all at Los Padrinos. Student's pathologies are deep, his depression is severe, and his detachment is significant. Based upon Student's past conduct and his lack of response to the counseling he has received, Student's addiction to pornography has not been extinguished. He has not acted on his compulsions because he is presently incarcerated and under the constant scrutiny of custody staff. However, according to Dr. Schnel, once Student is released, all indications are that the compulsion will reassert itself. On questioning from the ALJ, Dr. Schnel acknowledged that sexual addictions are difficult to treat and have a high recidivism rate. However, he stated that you must attempt to address the addiction in the first place in order to treat it at all. Because the addiction is hard to treat, the milieu environment of an RTC is the only way to a possible successful outcome to Student's addiction. Dr. Schnel was unwavering in his conviction that the mental health services Los Padrinos was providing – and could provide – to Student were inadequate to address his mental health issues. Based upon his review of Student's educational records and previous assessments, Dr. Schnel would have recommended RTC placement for Student at least as far back as Student's initial entry to juvenile hall in January 2011.

95. LACOE argues that Dr. Schnel's assessment and opinions should not be considered because they were never made available to Student's IEP teams and LACOE was not aware of the test results or Dr. Schnel's opinions until he testified at hearing. LACOE's position is not persuasive for a number of reasons. First, Dr. Schnel's assessments were offered to support Ms. Bautista's findings, which were presented to Student's IEP team on July 27, 2011. Dr. Schnel's findings and opinions fully support Ms. Bautista's assessments, recommendations and testimony at hearing. Secondly, the question presented for hearing was whether Student required an RTC placement on July 27, 2011, and continued to require it as of the hearing. Dr. Schnel's assessments and opinions specifically address his findings regarding Student as of early February 2012, a few weeks before the hearing began. LACOE was fully aware that the hearing was going to cover Student's needs as of the present. LACOE presented the testimony of Ms. Grosshandler and Mr. Meehleis, neither of whom had provided instruction or services to Student at the time of his July 27, 2011 IEP. Ms. Grosshandler and Mr. Meehleis did not begin providing services to Student until mid-September 2011. LACOE did not present testimony from either the SDC teacher or the

school psychologist who had been providing services to Student at the time LACOE first determined on July 27, 2011, that an RTC was not necessary to meet Student's needs. The relevancy of Ms. Grosshandler's and Mr. Meehleis's testimony is identical to the relevancy of Dr. Schnel's testimony: each testified as to whether he or she believed that Student did or did not require an RTC subsequent to his July 27, 2011 IEP and continuing to the present. Finally, the ALJ recognized that LACOE had not had an opportunity to review Dr. Schnel's reports prior to the beginning of the hearing. The ALJ therefore offered to continue the hearing in order for LACOE staff to review Dr. Schnel's assessments and determine if it needed to call a witness to rebut Dr. Schnel's testimony or his test results. LACOE declined the offer of a continuance and did not present any witness to rebut Dr. Schnel's assessments or testimony.

96. Dr. Schnel was a persuasive witness. None of the other witnesses had the education, credentials, or experience that equaled his. Dr. Schnel thoroughly reviewed Student's records, observed him at school, and administered standardized tests to him. Dr. Schnel was a school psychologist for over 30 years and comprehends the standards to be applied in determining whether a student requires an RTC placement. In his private consultation practice, he is hired by both families and school districts, and therefore did not indicate any obvious bias in his testimony. Dr. Schnel answered all questions directly and acknowledged the negative aspects of the RTC placement, such as whether Student's addiction could ever be cured. LACOE's cross-examination of Dr. Schnel failed to elicit any wavering in his opinion that Student required an RTC placement since his incarceration at Los Padrinos because Student's educational needs were too intertwined with his mental health needs to be parsed out. Dr. Schnel's opinion that Student's mental health needs can only be met in an RTC is therefore entitled to substantial weight.

## LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of proof on the sole issue presented at hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Student contends that he has required placement at an RTC since at least July 27, 2011, when his IEP team met to discuss the DMH assessment conducted by Ms. Bautista which recommended that Student be placed at an RTC. Student contends that he continues to require placement at an RTC. He contends that his documented history of sexual compulsions, manifested by his addiction to pornography, which resulted in his prior school district finding him to be an emotionally disturbed student, have not been addressed while he has been incarcerated at Juvenile Hall and placed at the LACOE school at Los Padrinos. Student contends that his mental health condition is intertwined with his educational needs and that, therefore, the fact that he has made some educational progress while at Los Padrinos is not dispositive of his need for an RTC placement.

3. LACOE contends that it has provided Student with a FAPE during the relevant period, and placement in a RTC as recommended by DMH at the July 27, 2011 IEP team meeting was not warranted, and continues not to be warranted or necessary. LACOE contends that Student is able to access his education and has made meaningful progress toward his goals while at Los Padrinos, as demonstrated by his school records and the testimony of his teacher and the LACOE school administrators. LACOE contends that nothing about Student's behaviors during the time he has been at Los Padrinos indicates that his mental health or educational needs cannot be met by LACOE at Los Padrinos.

4. As discussed below, Student has met his burden of proof that LACOE failed to provide a FAPE from July 27, 2011, to the date of the hearing, because the weight of the evidence demonstrates that LACOE was not addressing and is not equipped to address Student's mental health needs. The weight of the evidence demonstrates that Student's needs can presently only be met in an RTC setting and that the failure to place him at one has therefore denied him a FAPE.

#### *Applicable Law*

##### *Provision of FAPE*

5. A student with a disability has the right to a FAPE under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) consisting of special education and related services. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) FAPE is defined as special education, and related services, that are available to the student at no cost to the parent or guardian, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5 § 3001, subd. (p).) The term "related services" (designated instruction and services in California) includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.) Related services must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).) An educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F.3d 1025, 1033.) Related services may include counseling and guidance services, and psychological services other than assessment. (Ed. Code § 56363, subd. (b)(9) and (10).)

6. Court decisions have defined what constitutes a child's unique educational needs, beginning with cases based on court interpretations of the Education for All Handicapped Children Act (EHA), the predecessor to the IDEA. The seminal case regarding the parameters of what a school district must provide a student in order to provide a FAPE is *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*). In *Rowley*, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. Under *Rowley* and state and federal

statutes, the standard for determining whether a school district's provision of services substantively and procedurally provided a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301; *Rowley*, *supra*, at p. 200.)

7. Cases decided subsequent to *Rowley* have refined the parameters of what constitutes a child's unique needs. A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs, but do not include medical needs. *Clovis Unified School Dist. v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635 (*Clovis*), is a case concerning a young girl with a serious emotional disturbance. Due to her destructive behaviors, the student's parents moved her from a mental health treatment program to an acute psychiatric hospital under the authority of the state Department of Health Services. While at the hospital, the student received in-hospital instruction from one school district. The student's parents resided within the boundaries of the Clovis Unified School District and sought due process to have Clovis pay for student's expenses while hospitalized. All parties agreed that the student needed a residential placement. Student contended that the hospital constituted either "related services" or a "residential placement" covered by the EHA. Clovis contended that the psychiatric hospitalization constituted "medical services" excluded from coverage under the EHA. The Hearing Officer and United States District Court found for the student, but the Ninth Circuit reversed holding that Clovis was not responsible for the costs of the hospitalization. The court identified three possible tests for determining when a school district is responsible for the cost of a residential placement: (1) when the placement is "supportive" of the child's education; (2) when medical, social or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement primarily aids the student to benefit from special education. The Ninth Circuit determined that the student's psychiatric hospitalization was for medical rather than for educational reasons and therefore did not satisfy any of the three enumerated standards.

8. The outcome was different in the case of *Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493 (*Seattle*). There, the school district found the student eligible for special education under the disabling condition of serious emotional disturbance after the district had expelled Student for assaultive behaviors and after she had been hospitalized at a psychiatric facility. The district offered to mainstream the student in a specialized self-contained behavioral classroom with counseling services. Student's parents disagreed and obtained an independent educational evaluation (IEE) that recommended placement of student in an RTC. The Ninth Circuit affirmed decisions by an ALJ and the United States District Court in favor of the student. The Court found that an out-of-state RTC was the least restrictive environment for the student who did not derive any meaningful educational benefit from a district school. On the issue of educational benefit, although the student tested appropriately on standardized tests, "(T)he term 'unique educational benefits' [shall] be

broadly construed to include the handicapped child's academic, social, health, emotional, communicative, physical and vocational needs." (*Id.* at p. 1500.)

9. In *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458 (*County of San Diego*), the student was a teenager diagnosed with intermittent explosive disorder. At the end of eighth grade, County Mental Health (CMH) found the student eligible for AB 3632 services and began providing her with outpatient psychotherapy. Shortly thereafter, the IEP team classified the student with a serious emotional disturbance (SED). During the student's freshman year in high school, the IEP team changed her placement to an Adolescent Day Treatment (ADT) where she had mixed results. At the start of tenth grade, after a particularly aggressive incident, the parent unilaterally placed the student in an RTC, and brought a due process case against CMH. The Hearing Officer found that the student had made no progress with her mental health plan and in the ADT, and ruled in favor of the student's placement in the RTC. CMH appealed through a civil action to United States District Court, which ruled that CMH could not challenge the student's designation as SED and upheld the administrative decision. The Ninth Circuit affirmed. The Court also found that the RTC placement was necessary and appropriate because the student did not achieve the mental health treatment goals in her IEP. On this subject, the court stated "(T)he correct standard for measuring educational benefit under the IDEA is not merely whether the placement is 'reasonably calculated to provide the child with educational benefits,' but rather, whether the child makes progress toward the goals set forth in her IEP." (*Id.* at p. 1467.) The court also noted that "educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization." (*Ibid.*)

10. The Ninth Circuit decided two cases in 2009 addressing residential placements. Both concerned the Ashland School District, which is located in Oregon. The student in the first case, *Ashland School District v. parents of Student E. H.* (9th Cir. 2009) 587 F. 3d 1175 (*Ashland v. E.H.*), had suffered from emotional problems and migraine headaches that led to suicide attempts and hospitalizations. The parents ultimately privately placed Student at an RTC without giving appropriate notice to the school district. The hearing officer found that the district had not offered the student a FAPE and ordered that the parents' private placement be reimbursed partially, discounting the amount due to the parents' failure to notify the district of the placement. The District Court reversed on several grounds: a) the cost of the RTC was too high to justify reimbursement; b) the student's parents failed to notify the school district before privately placing student at the RTC; c) the student's issues were primarily medical, not educational; d) the parents failed to notify the district they were rejecting the district's proposed IEP; e) the district had always been willing to modify the student's IEP; and f) the parents were unwilling to consider returning the student to a district school. The District Court also specifically found that the student's educational and medical issues were not intertwined and that the parents had placed the student at the RTC primarily for medical reasons. The Ninth Circuit affirmed, primarily based on its finding that it did not have to defer to the hearing officer's decision and that the Ninth Circuit reviews district court decisions for abuse of discretion. The Ninth Circuit found that the District Court had not abused its discretion in overruling the hearing officer

and finding for the school district. The Ninth Circuit also found that the evidence supported the District Court's findings that the parents had placed the student at the RTC based on problems at home rather than at school. The Court also found that the evidence showed that the student was unable to access his education at the RTC for at least six months, supporting a finding that the placement was for medical rather than educational reasons.

11. The student in *Ashland School District v. Parents of Student R.J.* (9th Cir. 2009) 588 F.3d 1004 (*Ashland v. Student R.J.*), had different issues. Although she had ADHD, which caused her to have difficulty completing homework, her primary problems occurred outside of home. She would sneak away from home to see a boyfriend who was abusive to her and she had an affair with a custodian much older than she. Her mother informed the student's IEP team that the student was defiant at home, that she lied, and was untrustworthy. The IEP noted that the student was performing well at school. Ultimately, the student's parents sent her to an RTC. When the student continued her defiant behavior at the RTC, her parents sent her to a different one. The parents ultimately filed to due process alleging that the school district had denied FAPE and requesting reimbursement for the RTC placements. The hearing officer found the district had committed procedural violations of the IDEA and ordered reimbursement to the parents for the second RTC placement. The District Court overturned the finding that the district had denied a FAPE to the student. The District Court found that the student did not require an RTC to address her educational needs because all of her issues occurred outside of the school setting and were issues independent of the educational process. Citing to *Clovis*, the Ninth Circuit upheld the District Court's ruling. The Court agreed that an RTC placement was not necessary to meet the student's educational needs because her risky behaviors occurred outside of the school setting.

12. To determine whether LACOE offered Student a FAPE, the ALJ must focus on the adequacy of the program LACOE provided to Student. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's potential. (*Id.*, at pp. 198-200.) Rather, the *Rowley* Court held that school districts must provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the student. (*Id.*, at p. 200.) If LACOE's program met the substantive *Rowley* factors, then it provided a FAPE, even if Student's parent preferred another program, and even if his parent's preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p. 1314.)

13. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams by & through Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (hereafter *Adams*)). "An IEP is a snapshot, not a retrospective." (*Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992 (*Roland M.*); *Adams, supra*, 195 F.3d at p. 1149, citing *Fuhrmann v. East Hannover Bd. of Educ.* (3d Cir. 1993)

993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Roland M., supra*, 910 F.2d at p. 992.)

14. Special education due process hearing procedures extend to students who are wards or dependants of the court, to their parents or guardians, and to the public agencies involved in any decisions regarding the students. (Ed. Code, § 56501, subd. (a); *Orange County Dept. of Ed. v. Calif. Dept. of Ed.* (9th Cir. 2011) 650 F.3d 1268.) IDEA due process hearing requests brought by a student against a public agency properly include determinations of the public agency responsible for providing special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

15 In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) When a residential placement is recommended by an IEP team, the local educational agency, such as a county office of education, is financially responsible for the residential placement. (Cal. Code Regs., tit. 2, § 60010, subd. (k) (including county offices of education within the definition of local educational agency). Although previously under the Code of Regulations, the LEA was only responsible for the special education and non-mental health related services for a student at an RTC (Cal. Code Regs., tit. 2, § 60110, subd. (b)(2) (for residential placements, “The LEA shall be responsible for providing or arranging for the special education . . . and non-mental-health related services needed by the student.”), the changes to the Government Code, discussed in paragraphs 17 through 21 below, transferred responsibility for all aspects of an RTC placement to the LEA’s.

16 Federal and state laws require LEA’s to provide a program in the least restrictive environment to each special education student. (Ed. Code, §§ 56031, 56033.5; 34 C.F.R. § 300.114 (2006).)<sup>8</sup> A special education student must be educated with nondisabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has required several factors to be evaluated. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402.) However, if it is determined that a child cannot be educated in a general education environment, then the analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.)

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<sup>8</sup> All references to the Code of Federal Regulations are to the 2006 edition.

### *Mental Health Services and RTC Placements*

17. Prior to July 1, 2011, mental health services related to a student's education were statutorily provided by a local county mental health agency that was jointly responsible with the school district pursuant to Chapter 26.5 of the Government Code.<sup>9</sup> (Gov. Code §7570, et seq., often referred to by its Assembly Bill name, Chapter 26.5.) A student who was determined to be an individual with exceptional needs and was suspected of needing mental health services to benefit from his or her education, could, after the student's parent had consented, be referred to a community mental health service agency, such as DMH, in accordance with Government Code section 7576. The student had to meet the criteria for referral specified in California Code of Regulations, title 2, section 60040; and the school district, in accordance with specific requirements, had to prepare a referral package and provide it to the community mental health service agency. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 2, § 60040, subd. (a); Gov. Code § 7576 et seq.)

18. On October 8, 2010, then Governor Arnold Schwarzenegger signed the Budget Act presented to him by the state legislature after exercising his line-item veto authority. One of the items he vetoed was the appropriation for Chapter 26.5 mental health services by county mental health agencies. In his veto message he stated: "This mandate is suspended." (Sen. Bill 870 [SB 870], 2010-11 (Reg. Sess.) (Chaptered), at p. 12.)

19. On February 25, 2011, the California Court of Appeal for the Second Appellate District affirmed that the Governor had authority to veto the funding for the statutory mandate. (*Cal. Sch. Bds. Ass'n v. Edmund G. Brown Jr., Gov.* (2011) 192 Cal.App.4th 1507, review denied June 8, 2011) (*CSBA v. Brown*.) As a consequence of the Court's determination that the Governor's exercise of his line-item veto was constitutional, the obligation of county mental health agencies to provide mental health services was relieved at least as of October 8, 2010. Thereafter, from October 8, 2010, through June 30, 2011, county mental health agencies were not legally required to provide mental health services. The responsibility for providing mental health services to special education students therefore reverted back to the local education agencies such as LACOE in the instant case. However, as noted by the court in *CSBA v. Brown*, the California Department of Education decided to distribute funds already appropriated for mental health services to the county mental health agencies in order to continue the provision of Chapter 26.5 services, at least through mid-January, 2011.

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<sup>9</sup> Government Code section 7570 provides that the Superintendent of Education and the Secretary of the Health and Human Services Agency are jointly responsible to provide related services, including mental health services; and section 7571 provides that the Secretary may designate a State department to assume the responsibilities, and shall also designate "a single agency in each county to coordinate the service responsibilities described in Section 7572." These sections have not been amended or repealed. However, portions of Section 7572 have been changed effective July 1, 2011, subject to amendment or to repeal on January 1, 2012.

20. Official notice is taken that on June 30, 2011, California Governor Jerry Brown signed into law a new Budget Bill (SB 87) for the 2011-2012 fiscal year, and a trailer bill affecting educational funding (AB 114). Together the two bills did not repeal Chapter 26.5 of the Government Code in its entirety, but made substantial changes that involved repealing significant portions of it and related laws, particularly with respect to mental health services. Sections repealed were suspended effective July 1, 2011, and were repealed by operation of law on January 1, 2012, unless otherwise amended. There has been no amendment.

21. In significant part, the obligations of the State Department of Mental Health, and its county designees, such as DMH, to assess and provide related mental health services to special education students, were suspended and repealed, and the statutory responsibilities were transferred to the LEA's. (See Gov. Code, § 7573.) As of July 1, 2011, the LEA's, including LACOE in the instant case, have the lead responsibility to provide related mental health care services to its qualifying students. Therefore, beginning on July 1, 2011, Chapter 26.5 was fundamentally changed and significant statutory provisions for related mental health services were suspended, subject to repeal, which does not appear to have occurred. County mental health agencies are no longer statutorily obligated to assess and provide mental health services to qualifying special education students under Chapter 26.5, including Student. That responsibility for providing mental health services and for paying for the costs of those services, has reverted to the LEA's, such as LACOE in the instant case.

*Determination of Issue: LACOE denied Student a FAPE by failing to provide him with an RTC placement from July 27, 2011, to the present*

22. As discussed in Legal Conclusions 15 and 17 through 21, at all relevant times LACOE was statutorily responsible for providing Student with a FAPE because Student was under the jurisdiction of the juvenile court and housed at Los Padriños. In addition, by operation of AB 114, the mandate for mental health to be provided by county mental health agencies like DMH had been suspended, such that LACOE was solely responsible for providing Student with mental health related services. For the following reasons, LACOE's rejection of Ms. Bautista's recommendation, as discussed at the July 27, 2011 IEP meeting, that Student required an RTC placement, denied Student a FAPE. (Factual Findings 28, 29, and 51; Legal Conclusions 4 and 15-22.)

23. At first blush, LACOE's contention that it provided a FAPE to Student because Student was accessing his education and making progress toward his goals is attractive. LACOE contends Student was not presenting any major behavioral problems in class. Although his IEP team ultimately developed a behavior support plan for him, the behaviors that generated the plan were within the ability of Student's SDC teacher, Ms. Grosshandler, to address. Ms. Grosshandler is an experienced and highly competent special education teacher. Whether Student's behaviors of talking out and being somewhat non-compliant in class were prompted by Student's true issues or were merely prompted by Mother as a ruse to obtain an RTC placement, Ms. Grosshandler was quite capable of implementing the behavior plan and instructing Student. Additionally, as LACOE stresses,

Student was not engaging in any of the sexualized behavior or pornography seeking behaviors in which he had engaged prior to his placement at Los Padrinos. Superficially, it might appear that LACOE was meeting Student's educational needs. (Factual Findings 29-32, 53, 54, 58, 59, 61, 63, 73, 76, and 77; Legal Conclusions 3-6, 12-16, and 23.)

24. LACOE's contentions, however, miss the point of Student's unique situation. The evidence in this case is highlighted by the fact that Student has complex psychological problems which have resulted in a compulsion to seek out pornographic materials, to the extent of breaking into homes to view it and to stealing technology at school to view it there as well. As persuasively stated by Dr. Schnel and Ms. Bautista, Student's mental health needs are fully intertwined with his educational needs. Student's prior school district found him eligible for special education as an emotionally disturbed student not because of Student's troubling behaviors at home and in the community of compulsively seeking out pornography and public masturbation, but because those compulsions had started manifesting themselves at school. Student's IEP team made the ED determination because Student engaged in a series of incidents where he stole cell phones and laptops at school and found ways to access pornography on them. Although Student had received outpatient counseling from OCHCA, his prior school district, and other sources, his sexual addiction increased rather than diminished through the years. It was Student's addiction to pornography, which is the underlying basis for his ED designation, which prompted him to break into a home to view pornography. The break-in and resulting arrest, along with his violation of probation, that resulted in Student's placement at Juvenile Hall. His incarceration was therefore a direct result of Student's emotional disturbance rather than a result of any type of oppositional or defiant behavior. (Factual Findings 1-96; Legal Conclusions 4-24.)

25. LACOE's contention that Student's mental health issues are distinct from his educational issues is not persuasive. The only support for LACOE's position comes from educational staff, who are not trained in mental health issues, and from Mr. Meehleis, Student's present school psychologist. Mr. Meehleis's testimony was unpersuasive for the reasons described in paragraphs 68-72 of the Factual Findings. Mr. Meehleis never assessed Student. He generally does not assess students for RTC placements. His counseling sessions do not address Student's underlying addiction to pornography and Mr. Meehleis believes that the responsibility to address the addiction lies with DMH. Significantly, Mr. Meehleis's testimony that Student had stated that he no longer feels compelled to seek out pornography and would not need to when released, demonstrates Mr. Meehleis's lack of knowledge about the depth of Student's psychological issues. (Factual Findings 68-72; Legal Conclusions 4-25.)

26. The testimony of Ms. Bautista and Dr. Schnel was more persuasive than was the testimony of LACOE's witnesses. Dr. Schnel and Ms. Bautista have extensive education and experience in assessing and treating emotionally disturbed adolescents. They completed assessments which indicated the depth of Student's problems. They both persuasively testified, based upon their knowledge and experience, that Student's lack of pornography-seeking behavior at Juvenile Hall was a result of the structure of the placement and the fact

that probation staff was present in housing units and well as classrooms to maintain order. The structure and fear of real consequences served to keep at bay, but not extinguish, Student's underlying continued addiction to pornography. Both Dr. Schnel and Ms. Bautista convincingly testified that Student's psychological issues would compel him to return to his prior behaviors once released from Juvenile Hall unless he received help through an RTC placement. (Factual Findings 37-48 and 80-96; Legal Conclusions 4-26.)

27. Additionally, the evidence demonstrated that LACOE was not even attempting to address Student's underlying psychological issues through the counseling services provided in Student's IEP's. Dr. Schnel and Ms. Bautista were adamant that Student required a milieu RTC placement where mental health counseling would permeate all aspects of Student's day, including in housing units, at school, and during mental health services. They both were adamant that Student required family and group therapy in order to address his mental health problems. Ms. Alvarez stated the same during Student's IEP meetings. Mr. Meehleis was the only mental health professional who testified at hearing who believed that 30-minute weekly counseling sessions were sufficient to meet Student's needs. The fact that Student was not even meeting the simple coping strategy counseling goal in his IEP belies LACOE's contentions that the counseling it provides to him is sufficient. (Factual Findings 29-96; Legal Conclusions 5-27.)

28. LACOE's reliance on the case of *Ashland v. Student R.J.*, *supra*, is misplaced. That case, as well as *Clovis, Seattle, County of San Diego*, and *Ashland v. Student E.H.*, *supra*, all stand for the proposition that a student's educational needs include academic, social, health, emotional, communicative, physical and vocational needs. In *Ashland v. Student R.J.*, the District Court and the Ninth Circuit specifically found that the student's problems manifested at home or in the community and therefore primarily outside of the classroom. The decision of the student's parents to place her at an RTC was therefore prompted not by her educational needs at school but by her defiance at home and in the community. In contrast, Student in the instant case was found to be emotionally disturbed not because of his problems at home but because he became unable to refrain from his pornography-seeking behaviors at school. While LACOE has definitely been addressing Student's academic needs, it has not been addressing Student's non-academic educational needs because it has not and cannot provide him with appropriate related mental health services. The evidence demonstrates that LACOE's program at Los Padrinos does not include any of the core mental health services such as group and family therapy, that Student requires in order to address the underlying reasons that he was designated emotionally disturbed. (Factual Findings 29-96; Legal Conclusions 5-28.)

29. Furthermore, the changes in Chapter 26.5 support Student's contention that LACOE must meet all his mental health needs. Previously, an LEA such as LACOE was only responsible for the educational portion of an RTC placement. County mental health agencies were responsible for addressing the student's mental health needs that could not be met through counseling services at school. LEA's are now responsible for meeting all mental health needs. As stated above, LACOE has not met Student's needs in this case and

does not presently have the means to do so at Los Padrinos. (Factual Findings 28 -96; Legal Conclusions 5-29.)

30. LACOE's staff is providing commendable academic instruction to Student. However, the mental health services it is providing are inadequate and inappropriate to meet his educational needs. Student's mental health needs are intertwined with his educational needs and his present educational setting is not and cannot meet Student's overall educational needs. One of the stated purposes of the IDEA is to prepare special education students for further education, employment, and independent living. (20 U.S.C. § 1400 (d)(1)(A).) The basis for Student's special education eligibility under the category of emotional disturbance was Student's compulsion to seek out pornography even in the school setting and his inability to curb that need. LACOE is not addressing the mental health issues which were the reasons Student's previous school district found that he had an emotional disturbance. LACOE's failure to address those needs undermine the purposes of the IDEA because the present lack of appropriate mental health services is not preparing Student for life after he leaves juvenile hall. The testimony of Dr. Schnel and Ms. Bautista conclusively support Student's contention that LACOE should have followed Ms. Bautista's recommendation for RTC placement. Dr. Schnel and Ms. Bautista gave persuasive testimony, supported by their assessments, that Student's mental health needs can presently only be met at an RTC that provides family and group counseling, psychotherapy, and a milieu environment. Both have the education and experience to make their recommendations and neither has any reason to be biased against LACOE. Student has thus met his burden of proof by a preponderance of the evidence that he requires the restrictive environment of an RTC placement in order to address the underlying causes of his emotional disturbance and receive appropriate related mental health services. The weight of the evidence thus supports Student's contention that LACOE's failure to follow Ms. Bautista's recommendation for RTC placement, from July 27, 2011, to the present, has denied Student a FAPE. (Factual Findings 1-96; Legal Conclusions 1 and 4 through 30.)

#### ORDER

1. LACOE is ordered immediately to begin a search for an appropriate RTC placement for Student as recommended by Ms. Bautista in her assessment dated June 23, 2011, which was amended on or about September 5, 2011.

2. Unless otherwise countermanded by order of the juvenile court, LACOE shall complete its search for an RTC and convene an IEP meeting for Student to implement the RTC placement, within 45 days of the date of this Decision.

