BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2012080122
PARENT ON BEHALF OF STUDENT, v. ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT.	OAH CASE NO. 2012090246

DECISION

Elsa H. Jones, Administrative Law Judge, Office of Administrative Hearings (OAH), heard these consolidated matters on January 15-17, 2013, February 4, 2013, and February 6, 2013.

Student was represented by Father. Student did not attend the hearing. Mother attended the hearing on the morning of January 15, on January 17, and on the morning of February 4. Father and Mother are collectively referred to herein as Parents.

Antelope Valley Union High School District (District) was represented by Bridget L. Cook, Attorney at Law, general counsel for the District. Johan Mekel, the District's Director of Special Education, attended all hearing days.

Student filed a request for due process hearing (First Complaint) on August 3, 2012, which was assigned OAH Case No. 2012080122. Student filed a second request for due process hearing (Second Complaint) on September 7, 2012, which was assigned OAH Case No. 2012090246. On October 18, 2012, on the motion of District, OAH consolidated the First Complaint and Second Complaint, and continued the hearing. OAH further ordered that the timelines would be controlled by the date of filing of the Second Complaint.

Sworn testimony and documentary evidence were received at the hearing. The parties were ordered to file written closing briefs by no later than March 4, 2013. The parties filed their written closing briefs on March 4, 2013, at which time the record was closed and the matter was submitted.[1]

ISSUES

1. Whether District denied Student a free appropriate public education (FAPE) by enrolling her in multiple District schools from August 3, 2010, through September 13, 2010, without consulting Parents.

2. Whether District denied Student a FAPE from September 7, 2010, through May 6, 2011, by failing to implement the level of supervision set forth in Student's operative IEP's. [2]

3. Whether District denied Student a FAPE by failing to provide Student with required counseling services two times per month through May 6, 2011, as set forth in her IEP of October 4, 2010, and subsequent operative IEP's.[3]

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[1] District's closing brief was received by OAH after close of business on March 4, 2013. Since Student suffered no prejudice by this delay, the District's brief is deemed to have been timely filed.

[2] Student's Second Complaint referenced a February 14, 2010, IEP with respect to the issue of supervision, and, based thereon, the prehearing conference (PHC) Order issued on January 11, 2013, referenced an IEP of February 14, 2010, with respect to this issue. There was no evidence that any IEP occurred on February 14, 2010. Rather, based upon a review of the February 25, 2010, IEP, and the Complaints, the reference to the February 14, 2010, IEP in the Second Complaint was a typographical error, and was intended to be a reference to the February 25, 2010, IEP, about which evidence was presented at hearing, and which is further discussed below. District mentioned the lack of a February 14, 2010, IEP in its closing brief, however, no party brought these typographical errors to the attention of the ALJ during the hearing so that the record could be corrected at that time.

Additionally, Student's Second Complaint referenced the October 4, 2010, IEP with respect to the issue of supervision, however, the Second Complaint also alleged that District deprived Student of a FAPE due to events that occurred up to May 11, 2011. These events occurred when IEP's subsequent to the October 4, 2010, IEP were in effect. These subsequent IEP's were not referred to in the Second Complaint, although the evidence presented by both parties at hearing addressed these IEP's and their contents. Therefore, this issue has been restated to refer to "operative IEP's," so as to conform to the extent possible with the allegations of the Second Complaint.

[3]Student's Second Complaint specified only the October 4, 2010, IEP, with respect to this issue, however, as was discussed in footnote 2, *supra*, IEP's subsequent to October 4, 2010 were operative during the 2010-2011 school year at issue, and these IEP's were

4. Whether District denied Student a FAPE in September 2010, by discontinuing the bus transportation set forth in Student's February 25, 2010, IEP.

FINDINGS OF FACT

Background and Jurisdictional Matters

1. Student is a 17-year-old girl, who, at the time of the hearing, attended Devereux School (Devereux), a residential, therapeutic nonpublic school located in Texas. District and the Los Angeles County Department of Mental Health (DMH) placed Student at Devereux at the beginning of the 2011-2012 school year. At all relevant times, Student has been eligible for special education as a student with severe emotional disturbance (ED). Student lived in foster care at various times during the 2010-2011 school year, but at all relevant times during that school year Student lived within the boundaries of the District. Parents have held educational rights at all relevant times.

February 25, 2010, IEP

2. On February 25, 2010, when Student was 14 years old and in eighth grade at Joe Walker Middle School (Joe Walker), Student and Mother attended an IEP meeting to transition Student to high school. A representative of District, a general education teacher, a special education teacher, and a school administrator also attended the meeting. The IEP team noted Student's special education eligibility as ED, and that she had been diagnosed with depression, attention deficit hyperactivity disorder (ADHD) and post traumatic stress disorder (PTSD). She was taking Prozac at the time of the IEP. She had a history of physical and sexual abuse. She also had a history of eloping from the time she was nine years old. She had been hospitalized twice in August 2009, once for bizarre behaviors, and once for suspected drug abuse and an altered state of consciousness. No drugs were identified in the drug screening performed during the latter hospitalization. Parents expressed concern with Student's safety due to her eloping from school and home. The team noted that Student had not demonstrated such behaviors since her placement at Joe Walker in December 2009, and that Parents and Student's teacher were planning to mainstream her gradually with close attention to her monitoring. The team also noted Student was not in any mainstream classes, due to Parents' concern for her safety.

3. The team set forth Student's scores on the Woodcock-Johnson III (WJ-III), which District had administered to Student on September 10, 2009. Her standard scores ranged from a 160 on Writing Samples to a 92 in Math Fluency. The team concluded that Student's academic skills and academic task fluency were within the high average range. Her ability to apply academic skills was superior. Her performance was "very superior" in written language and written expression, "high average" in reading and math calculation skills, and "average" in

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addressed by both parties at hearing. As is further discussed below, these IEP's offered the same amount of DIS counseling as did the October 4, 2010, IEP. Therefore, for the sake of clarity, this issue has been restated to reflect the existence of these other IEP's.

math. The team also noted that Student's other psychoeducational assessment results revealed Student demonstrated average to above-average auditory processing skills and visual processing skills. She demonstrated superior skills with motor-reduced visual processing skills and low average skills with visual motor integration tasks.

4. The team also noted that the assessment results revealed that Student exhibited significant externalizing behaviors, including conduct problems. She was uncooperative or unresponsive when she perceived that an adult/authority figure was telling her what to do. She exhibited poor behavior regulation. Student's inappropriate behavior impacted her vocational skills, and led her to not complete or turn in school work. Therefore, her grades were below the level of her assessed academic skills.

5. The team concluded that Student required special education due to her significant behaviors. The team decided Student did not require academic goals. The team adopted two goals, one of which addressed Student's behavior and compliance with teacher direction, and one of which addressed Student's completion of classwork and homework. The team recommended Student continue her placement in a special day class (SDC) with an ED program. The SDC used a six-step level system with a token economy and other behavioral management techniques. The team also offered designated instruction and services (DIS services) to consist of counseling services of 45 minutes per week, and transportation. Parents stated they wanted to have close communication with the classroom teacher and wanted to make certain that Student was monitored throughout the day. The team recommended modifications to include supervision during unstructured time. The team noted that Student was receiving counseling services through Valley Child Guidance. The team projected that Student would graduate high school with a diploma in May 2014.

6. The District representative gave information concerning the behavior management program of the SDC ED in high school. The team completed a form entitled "Transfer to Antelope Valley Union High School District," which was attached to the IEP. The form stated that the team agreed that upon entering the District, she would be placed in the SDC-ED class for six periods daily.

7. Also attached to the IEP was a District Special Education Bus Service Request form (BSR), bearing the date of the IEP, signed by Mother and Student. The form specified Parent's home address as Student's address, and listed the school of attendance as Quartz Hill High School (Quartz Hill). Quartz Hill was a public high school that served the area in which Parents resided. Mother consented to the IEP.

Enrollment in the District

8. On March 9, 2010, while Student was living with Parents, and still in middle school, Mother signed a Student Registration or Information Change (SRIC) form to enroll Student in Quartz Hill, Student's school of residence, located in the District for the 2010-2011

school years. The form set forth Parents' home and mailing addresses as the home and mailing addresses for Student, and noted that Student was a special education student with an IEP.[4]

9. In April 2010, while Student was still in middle school, Student was placed in foster care, and the Los Angeles Superior Court appointed a Court Appointed Special Advocate (CASA) for Student. The CASA had authority to assist and advise regarding Student's educational planning. At all relevant times, Student's CASA was Toska Garner. From April 2010, when Student was in middle school, until March 1, 2011, when Student was in ninth grade and attending Quartz Hill, Student had a series of foster placements and other out-of-home placements.

10. Student graduated from middle school at the end of the 2009-2010 school year, when she was 14 years old. District's first day of school for the 2010-2011 school year was August 9, 2010. Parents assumed that Student would attend Quartz Hill, based on the enrollment form Mother had signed and submitted when Student was still in middle school. District's computerized enrollment records reflect that Student was enrolled at Quartz Hill from August 9, 2010 through August 11, 2010.[5] Yet, there was no evidence that Student attended Quartz Hill at the beginning of the 2010-2011 school year, even though the District had arranged bus transportation for Student, to begin on August 9, 2010. Rather, District's PowerSchool records show that Student was enrolled in William J. Pete Knight High School (Pete Knight) from August 12 through August 15, 2010, and that it was her school of residence. During this period of time, Ms. Dobson was Student's foster parent.[6] The PowerSchool records reflect that Student was enrolled in general education classes at Pete Knight, that she was present at Pete Knight on August 12 and August 13, 2010, and that her homeroom teacher was Dale Hobart. Mr. Hobart, who testified at hearing, had no recollection of Student. Pete Knight personnel could locate no records of Student. However, the uncontradicted testimony of Mr. Mekel, established that Student's middle school records would have been sent to Quartz Hill pursuant to her transition IEP of February 25, 2010. Therefore, personnel at Pete Knight would not have had immediate access to Student's middle school records so as to learn that Student was a special education student and had an IEP. If the person who enrolled Student, such as Student's foster parent, did not reveal Student's special education status at the time of enrollment, Pete Knight had no ready method of discovering Student's status so as to place her in an appropriate special education program.

11. District did not advise Parents that Student was attending Pete Knight, and Parents did not know that Student was enrolled in and attending Pete Knight at the time she was enrolled in and attending school there. There was no evidence that Parents ever advised Ms.

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[4]The form erroneously stated that Student's last IEP was December 14, 2009, instead of February 25, 2010, but this discrepancy has no significance to this matter.

[5]The District's computerized records program is known as PowerSchool.

[6]Ms. Dobson's first name was never revealed at hearing.

Dobson or Ms. Garner, Student's CASA, that they wanted Student to attend Quartz Hill and not Pete Knight.

12. Student was removed from Ms. Dobson's care at some point between August 13, 2010, and August 16, 2010, and on or about August 16, 2010, Stevette Brothers became Student's new foster parent.[7] Ms. Brothers remained Student's foster parent until March 1, 2011, when Student returned home to live with Parents.

13. On or about August 13, 2010, when Student was still enrolled at Pete Knight, Mother again signed and submitted to the District an SRIC form to enroll Student at Quartz Hill.[8] The form listed Parents' home address as Student's address, and incorrectly stated that Student was not in a foster home. At hearing, Mother testified that she believed that Ms. Garner, the CASA, was with her when she completed and signed the enrollment forms, and Ms. Garner advised the District that Student was in foster care.

14. Also on August 13, 2010, Teri Meeks, a special education transportation clerk for the District, received a call from Ms. Garner, Student's CASA. Ms. Meeks understood from Ms. Garner that Student was in court-ordered temporary foster care, and that Ms. Brothers would be Student's foster parent. Ms. Garner advised Ms. Meeks that Student would remain at Quartz Hill and would need transportation between Ms. Brothers's address and Quartz Hill from August 16, 2010, until September 1, 2010, while Student was in temporary foster care. Ms. Meeks further understood from her conversation with Ms. Garner that on September 1, 2010, Student would return to live with Parents. Accordingly, on August 13, 2010, Ms. Meeks filled out and e-mailed to Antelope Valley Schools Transportation Agency (the District's bus service) a typed BSR form, which contained much of the same information as did the handwritten BSR form attached to Student's February 25, 2010, IEP. Ms. Meeks included a typed notation on the form that, as of August 16, 2010, until September 1, 2010, Student should be picked up and dropped off at Ms. Brother's residence and transported to Quartz Hill. The form noted that Ms. Brothers was Student's foster parent, that Parents were Student's parents, and that Student was in court-ordered temporary foster care. The form also reflected that, as of September 1, 2010, the pick-up and drop-off location would be Parents' residence address. Subsequently, on August 24, 2010, Ms. Meeks had another conversation with Ms. Garner,

[7] Parents had no recollection as to the precise dates that Student was in Ms. Dobson's foster care, or the date on which Student was placed in Ms. Brothers's foster care, and no other evidence was presented on these issues.

[8] If Parents had assumed that Student was enrolled in and attending Quartz Hill as of August 9, 2010, and were not aware that she was enrolled in Pete Knight during the time she was enrolled there, it is unclear why Mother filled out another set of enrollment forms for Quartz Hill on August 13, 2010. Mother testified that she did so because of her knowledge that Ms. Brothers had enrolled Student at Eastside, but Ms. Brothers did not enroll Student at Eastside until August 16, 2010, as is further described below. Mother's testimony regarding these facts is not consistent with, and makes no sense in light of, the unchallenged documentary record regarding when Student enrolled at Eastside.

during which Ms. Garner advised Ms. Meeks that there was a court hearing on September 1, 2010, and Student would need transportation from Parents' home to Quartz Hill starting September 2, 2010. During this conversation, Ms. Garner advised Ms. Meeks that Student was enrolled at Eastside High School. Ms. Meeks documented these conversations with Ms. Garner, and the steps Ms. Meeks followed pursuant to these conversations, in an e-mail dated September 3, 2010, to Verlinda Ginn, a social worker with the Department of Children and Family Services (DCFS). Ms. Meeks's e-mail also advised Ms. Ginn that Ms. Meeks could only arrange this bus transportation on a temporary basis, since Student's foster home was in the Eastside residence area, not the Quartz Hill residence area. Ms. Meeks's e-mail noted that if such transportation were needed on a permanent basis, the District special education program specialist would have to approve it. In this regard, all of the BSR forms Mother filled out stated that Student was eligible for transportation from "home to school." To the best of Ms. Meeks's recollection, the program specialist ultimately did not approve ongoing transportation between Ms. Brothers's residence and Quartz Hill, but no documentation of this decision was presented at hearing, and there was no evidence that Parents were notified of this decision.

15. On August 16, 2010, without the Parents' knowledge, Ms. Brothers signed an SRIC enrolling Student at Eastside High School (Eastside), also located in the District. Eastside was the high school of residence based upon Ms. Brothers' address; Quartz Hill was Student's home high school based upon Parents' address. The SRIC contained Ms. Brothers' address, and stated that Student was in a foster home. The SRIC did not state that Student was a special education student. District placed Student in the ED class at Eastside, where her teacher was Mark Cook. Mr. Cook holds a B.A. in behavioral science from California Polytechnic University, Pomona (Cal. Poly Pomona). He has been a special education teacher for 25 years. He holds a Learning Handicapped credential and a Resource Specialist credential, both from Cal Poly Pomona. He also often takes classes regarding special education topics at the University of La Verne to enhance his knowledge and to advance in his employment.

16. While at Eastside, District enrolled Student exclusively in special education classes.[9] Student attended Eastside from August 16, 2010, until September 7, 2010, when Mother enrolled Student at Quartz Hill, as described below. District did not notify Parents that Student was enrolled at Eastside.

17. At some point while Student was attending Eastside, Student requested Mr. Cook write a letter stating she had made progress, so that Student could show it to her social worker. Mr. Cook wrote the letter as Student had requested. The letter, which was undated, was not written on school stationery, because Mr. Cook considered the letter a personal recommendation, and not an official letter authorized by the school. The letter was addressed, "To Whom it May Concern," and stated that Student was thriving in her Emotionally Disturbed program at Eastside, that she has not exhibited violent, abusive, and non-compliant behaviors while in this program, that she was beginning to become successful, and that she had a 4.0 grade average. Mr. Cook's letter also noted that Student was active and an officer in a school

[9] There was no clear evidence as to how the personnel at Eastside learned that Student was a special education student and had an IEP.

club. Mr. Cook concluded his letter by stating that in view of Student's involvement in positive areas in school he would hate to see her move to another school.

18. Also at some point while Student was attending Eastside, Student advised Mother that she was attending Eastside, despite Mother having previously enrolled Student at Quartz Hill. At or about the same time as Student imparted this information to Mother, she also told Mother that, when the school bus first appeared in mid-August at Ms. Brother's house to pick-up Student and take her to Quartz Hill, Ms. Brothers told the bus driver that Student did not require transportation as she was not attending Quartz Hill, and sent the bus away. Mother did not recall when Student imparted any of this information to her. Mother did not recall notifying either Eastside or Quartz Hill, upon learning of Student's attendance at Eastside, that Parents wanted Student to attend Quartz Hill. Mother only recalled that, upon learning Student was attending Eastside, she notified Student's social worker, Student's CASA, and Parents' court-appointed counsel that Student was attending Eastside, and that Parents wanted Student to attend Quartz Hill.

19. After Ms. Brothers refused the bus transportation to Quartz Hill, there was no evidence that a school bus ever again appeared at Ms. Brothers's residence to take Student to any school, whether Eastside or Quartz Hill. The undisputed testimony at hearing of Mr. Mekel established that if Ms. Brothers had told the bus driver she did not want transportation, the District would have cancelled transportation. Mr. Mekel also testified that the court orders described below would have been included in Student's transportation file and cumulative file.

20. Student's education was an issue in the dependency proceedings regarding Student in the Los Angeles Superior Court Juvenile Court (Superior Court). The Superior Court held a hearing which involved Student's education on September 1, 2010. In a minute order of that date, the Superior Court confirmed that Parents held the Student's educational rights. The Superior Court minute order also ordered that Student be enrolled in Quartz Hill, and that the DCFS provide funds for Student to be transported between her foster home and Quartz Hill. Contrary to Ms. Meeks's understanding from Ms. Garner that Student was to be returned to Parents from foster care on September 1, the Superior Court did not change Student's foster care status. At a subsequent hearing held on September 13, 2010, at which Parents and their counsel appeared, the Superior Court reaffirmed that Parents held Student's educational rights, and ordered Student to remain at Quartz Hill, and to remain in foster care. The Superior Court specified that Parents were to transport Student to and from school, and they were to have unmonitored visitation for this purpose. The Superior Court vacated its previous order that DCFS provide funds for Student to be transported back and forth to Quartz Hill from the foster parent's home, and specified that DCFS was to provide Parents with transportation funds.[10] Father testified at hearing that the Superior Court rendered this

[10] The minute orders of September 1, 2010 and September 13, 2010, do not reveal that Student's educational issues were the only reasons for those hearings in Superior Court. Rather, the minute orders also reflect other orders rendered by the Superior Court at those hearings, which are not relevant to this matter.

transportation order because the social workers had advised the court that Ms. Brothers, Student's foster mother, refused to provide transportation to and from Quartz Hill, and that the District would not provide transportation for Student from Ms. Brothers's address. There was no evidence as to the basis for the social workers' representation to the court that the District would not provide transportation for Student. Father testified that Parents then advised the court that they would agree to transport Student to and from school.

21. On September 7, 2010, Mother executed and submitted a form withdrawing Student from Eastside, and stating that Student was transferring to Quartz Hill. Handwriting on the form stated the reason for withdrawal as "New foster Placement." At hearing, Mother was unable to identify that handwriting. In fact, Student's foster placement had not changed at that time, but remained as it was on August 16, 2010, when Ms. Brothers, Student's foster parent, enrolled her at Eastside. Also on September 7, 2010, Mother executed another BSR. The BSR listed Ms. Brothers's address as the pick-up and drop-off address, but Mother did not believe she had filled out Ms. Brothers's address on the BSR. As is further discussed below, District did not provide bus transportation to Student pursuant to that BSR. After September 7, 2010, District never received another request from Parents for bus transportation.

22. On an unspecified date, Father became aware of the undated letter Mr. Cook had written, and thought that it was an attempt by the District to influence the Superior Court to allow Student to attend Eastside. On October 6, 2010, when Student had been enrolled at Quartz Hill for almost a month, Father personally met with Eastside's vice-principal, Kathryn Stanley, to express his concerns about Mr. Cook's letter. In Mr. Father's presence, and with his approval, Ms. Stanley wrote a letter on that day addressed "To Whom it May Concern," in which she stated that Mr. Cook "took it upon himself to elaborate certain facts which, upon my investigation, were not completely true." Neither at hearing nor in her letter did she specify as to what facts were not "completely true." Her letter also stated, "In her [Student's] short time here at Eastside High School, she showed good grades and progress." Ms. Stanley gave the letter to Father.

23. Mr. Cook denied that he had submitted his letter to the Superior Court, and there was no evidence that either Mr. Cook's letter or Ms. Stanley's letter was submitted to Superior Court. The District did not appear at the Superior Court hearings that occurred on September 1 and September 13, 2010, and there was no evidence that anyone from the District provided any documentation or information to the Superior Court with respect to these two hearings.[11] There was no evidence that the Superior Court held any other hearings pertaining to Student's education.

[11] At hearing, Father testified that the Superior Court hearing on September 13, 2010, was originally set for September 10, 2010, and was continued to September 13, 2010. Student's First Complaint alleged that the court date of September 10, 2010, was generated by the District to challenge the court's order of September 1, 2010, in an attempt to remove Student from Quartz Hill and send her to Eastside against Parents' wishes. As was stated above, there was no evidence that the District had any involvement in the court proceedings of September 1, 2010, or September 13, 2010, or any other court proceedings.

Student's Attendance at Quartz Hill

24. As a result of the September 1, 2010, minute order, and pursuant to the enrollment forms Mother provided on September 7, 2010, Student enrolled in Quartz Hill on September 7, 2010. District did not provide bus transportation for her after she enrolled at Quartz Hill on September 7, 2010. Rather, pursuant to the Superior Court minute orders, Parents transported Student to and from Quartz Hill. They picked her up in the morning from a site near Student's foster home and drove her to school. Student was not met by any school personnel upon her arrival at school; she simply walked onto campus. Parents transported Student from school back to a site near Student's foster home at the end of the school day. Student was not escorted to Parents' car by school personnel at the end of the school day. Parents received reimbursement from DCFS for transporting Student to and from school, pursuant to the Superior Court's minute order.

25. At Quartz Hill, District placed Student in an SDC ED class taught by Tim Sanchez. Mr. Sanchez has been a special education teacher since 1992, and almost all of his special education teaching experience has been in ED classrooms. He holds a B.A. in history from California State University, Northridge (CSUN), from which he also received a special education severe credential in 1995.

26. Student's SDC ED class at Quartz Hill was a small, behaviorally-focused class for students with an ED eligibility. Behavioral interventions were an integral part of the class, along with academics. Primary behavioral management tools in Student's SDC ED class were a token economy and a "level system." The level system was a four-tiered system, under which students received more privileges and rewards, including less monitoring and supervision, the better they behaved and performed academically. Level 1 of the level system involved the highest level of monitoring, under which the child could not leave the classroom without an escort, and the child's lunch and snack would be brought into the classroom. The monitoring and supervision decreased as the levels increased, such that at level 4 a child could, in general, move about the campus as would typical children, and was free to go to snack and lunch. The level a child earned would be determined at the end of each week, and it could go up or down at that time, unless the student's behavior was so poor that it warranted an immediate or automatic level drop before the week ended. As the school year progressed, Student was able to achieve levels 3 and 4. If Student walked out of class without permission, Mr. Sanchez would send an assistant to follow her. If Student did not appear at class, but other students had told him she was at school, he would attempt to locate her in a variety of ways, such as by calling security, calling other teachers, and/or alerting the school psychologist or the vice-principal. Mr. Sanchez recalled that it was not common for Student to miss class. When Student was at the lower levels of the level system, Mr. Sanchez advised all teachers to have Student escorted to the bathroom. In his class, if she requested to go to the bathroom, he would have an aide escort her to and from the bathroom. If no aide was available, Mr. Sanchez would call security and have security escort her to and from the bathroom. Student would also be escorted between classes. When Student was at the higher range of the level system, Student would be able to go to the bathroom with a pass, but without an escort, and she would not be escorted between classes. Mr. Sanchez stated that it was his practice to let the parents know if a student was

being allowed to go to the bathroom without an escort. At hearing, Parents denied that they received any such notification, and stated that they would not have permitted Student to go to the bathroom without an escort. In addition to her classes in the SDC ED, Student was placed in a general education ceramics class, and, at least initially, in a general education English class.

October 4, 2010, IEP

27. On October 4, 2010, the District convened a 30-day IEP to review Student's program and placement. The IEP team included Parents, Ms. Garner (Student's CASA), Mr. Sanchez (Student's special education teacher), Mr. Dilbeck (Student's general education English teacher), and a District administrator.

28. The team noted that Student was a very bright student with much potential. Student's behavioral issues were impacting her ability to function in a general education class. Parents were highly concerned with Student's safety due to her running away from school and home. The IEP described Student's SDC ED program, and stated that a point and level system, behavior modification, and a token economy were used to facilitate Student's access to the general education curriculum. The team noted she was making excellent progress, and was on level 1 in the 4-step level system. At one point she had earned level 3. The team noted that in middle school she would leave campus during the school day on a daily or weekly basis, although that conduct had not manifested itself since the previous December. The team also decided that the special education teacher would be in contact with Student's teachers in other classrooms so that they might make sure that Student was escorted to the restroom during class to prevent previous problems of leaving school during the day. The IEP team noted Parents' comments that they wanted to have close communication with the classroom teacher, and would like to make certain that Student was monitored throughout the day. The only mechanisms the IEP specified for monitoring and supervising Student were the level system and the escort to and from the bathroom when Student was excused during class.

29. The English teacher was unable to report any progress for Student because Student had numerous absences since the short period of time she was in his class. Student was behind in math class, and current in science. In both of those classes, she would work when she wanted to. When she was not working, she was not disruptive. Student's grades at the time were: D- in Health; F in Physical Education (P.E.); C+ in Algebra 1A and in Life Sciences; F in English; and F in Ceramics. The team listed the scores she received on the WJ-III in September 2009, and reiterated her psychoeducational assessment results as reflected in the IEP dated February 25, 2010. The team noted that since starting at Quartz Hill, Student had been disciplined twice. The first disciplinary action was for using her cell phone. The second disciplinary event involved a three-day in-school suspension for slapping another student. The team did not note that on September 21, 2010, Student ran off-campus. This event was documented on a school form which recorded Student's suspension for the slapping incident. The form included a handwritten comment which stated, in part, "Student ran off campus. Parent Contact @ 11:18." Student's eloping on September 21 was also recorded on the log in PowerSchool.

30. The team noted that Parents provided documentation from the previous school psychologist and other mental health care providers to the Quartz Hill school psychologist. The IEP team found that Student's behavior impeded the learning of herself or others. As a behavior strategy, the team offered that Student should immediately be granted a break when she requested one, and should be praised for using her language. Similarly, Student should immediately be given attention or help when she requested it, and praised for using her language. Praise would also be given for Student's use of learned and modeled phrases. Student would also be able to escape a non-preferred task/environment, and work in another area. Accommodations were offered to include preferential /assigned seating, use of an assignment notebook planner, and supervision during unstructured time (recess, lunch, and passing time between classes.)

31. The team determined that Student did not require academic goals. The team developed one goal in the area of work completion, and one goal in the area of behavior. The behavior goal recorded as a baseline that Student had difficulty with teacher direction, and provided that when angry, bothered or upset, Student would follow teacher directive to move to a designated area and remain there 100 percent of the time, as measured by observation and daily points. The team developed three short-term objectives related to the goal. The IEP did not specify the designated area where Student would be moved, however, the evidence revealed that Student would be moved to the school psychologist's office, where she would receive counseling. There was no evidence that formal records were kept regarding the number of times that this counseling occurred.

32. The team agreed to place Student in the SDC ED program, with counseling to occur 30 minutes per session, two sessions per month. The team offered transportation. Parents did not bring to the IEP team's attention any concern regarding the fact that the District was not providing transportation. The team did not offer Extended School Year services (ESY). The team noted that Student was also receiving counseling services, outside of school, from Valley Child Guidance. The team agreed to refer Student for mental health services. The team projected that Student would complete high school on May 28, 2014, with a diploma.

33. District sent Parents a copy of the IEP and a form for Parents to sign their consent to the IEP. Mother noted on the form that she disagreed with the IEP and wished to have another IEP meeting, and she did not check the box on the form consenting to the IEP. Mother did not specify her reasons for disagreement with the IEP, noting on the form only that she agreed with the IEP except for "omissions and important concerns."

Student's Suspension for Alcohol Use, November 9, 2010

34. Between the October 4, 2010, IEP meeting, and November 9, 2010, Student's behavior included a variety of defiant and disobedient conduct, such as walking out of PE class without permission, not following directions, refusing to go outside, using profanity, disrespecting teachers, and refusing to dress for P.E. This conduct affected Student's level in the level system, and resulted in in-school suspensions.

35. On November 9, 2010, Mr. Stanford, one of Quartz Hill's vice-principals, suspended Student for five days off-campus because she used alcohol on campus. Student's alcohol use was discovered by Chris Niemeyer, a school security guard. On that day, at approximately 11:05 a.m., which was during Student's lunch period, Mr. Niemeyer observed Student with several other students on the "200" quad. As they walked by, Mr. Niemeyer smelled alcohol. He singled out one of Student's companions to stand before him and breathe to ascertain if her breath was the source of the alcohol odor, but he was not able to ascertain that Student's companion had been drinking alcohol, so he let her go. A few minutes later, he noticed that Student's group had been joined on the quad by two other students. Since the group was staring at him, Mr. Niemeyer went to the security office to watch the group on camera. While in the security office, he observed the group walk into the female restroom. He then called the female custodian to check the restroom to make sure the group was not conducting any illegal activity in the restroom. As the custodian walked on to the quad, the group dispersed in opposite directions. Mr. Niemeyer walked into the quad to talk to the female custodian, who had not observed any illegal activity. As Mr. Niemeyer was talking to the custodian, a vice-principal appeared, and reported to Mr. Niemeyer that she had seen the group converge on the "100" quad. He advised that she might want to check the restroom on that part of campus. The vice-principal called Mr. Niemeyer on the radio, and asked him to come by the "100" quad." When he arrived, he could smell alcohol as he approached the group. In response to his inquiries, Student confessed that she had some alcohol in her purse, and eventually confessed that she had been drinking alcohol in the school bathroom. In addition to suspending Student for this incident, Mr. Stanford required Student to sign an Alcohol/Drug Offense Contract (Contract) by which she was to complete the District's Alcohol/Drug Diversion program, which consisted of two four-hour Saturday sessions. Student and Mr. Stanford signed the Contract on November 9, 2010; Father signed it on November 15, 2010. At hearing, Father contended that the fact that he did not sign the Contract for six days indicated dilatory conduct by the District in notifying Parents of this incident. However, according to the school calendar, there was no school on November 11, 2010, as it was Veterans' Day, a legal holiday, and no school on November 12, 2010, as it was a "local holiday," pursuant to Education Code section 37220. School was not in session on November 13, 2010, and November 14, 2010, as those dates were Saturday and Sunday, respectively. Therefore, Father signed the Contract on the Monday after the incident occurred, which was the third school day from the date of the incident.

December 1, 2010, IEP

36. District convened an IEP on December 1, 2010, not only to serve as an annual IEP, but also in response to Parents' request for an IEP meeting to discuss their concerns with the October 4, 2010, IEP. The IEP team included Parents, Student, the school psychologist, Latisha Sampson (Student's school-based counselor), Ms. Brooks (Student's ceramics teacher), Mr. Sanchez (Student's special education teacher), Ms. Garner (Student's CASA), and a District administrator.

37. The IEP was largely the same as the IEP of October 4, 2010, but there were several updates and additions. Ms. Brooks reported that Student was not passing her ceramics

class, although she could pass the class if she made up the work. Student's absences due to suspension and other unexcused absences had affected her grade. The team also noted that Student was not passing PE, which was primarily due to Student not participating or dressing for class. Student's other grades were Health "D" (64 percent); Algebra 1A "C+" (79 percent); Life Science "B-" (82 percent); and English "A" (93 percent). The team commented that Student had been on level 1 in the level system for the "past several weeks," and was currently mainstreamed only in Ceramics. The team added a transition plan and a transition goal. The team further explained and commented upon some of the accommodations. The team noted that Student's preferential seating should be where there was the least amount of distractions. With respect to the "supervision during unstructured time" accommodation, the team also referenced supervision on levels 1 and 2 of the level program. The only mechanism the IEP specified for monitoring and supervising Student was the level system.

38. The team broadened the behavior goal with respect to teacher direction, to include "adult directives," and set dates on which the benchmarks should be obtained. As the baseline for the goal, the team noted Student had a problem following directions when she was upset or in a high emotional state, and that she only followed such directives approximately 60 percent of the time, regardless of her emotional state. The team also modified the goal of completing homework.

39. The IEP notes reflect Parents' concerns that Student would engage in truancy behaviors as she had in the past at middle school, and they therefore wanted her attendance in mainstream classes to be closely monitored. Parents also advised the team that they wanted to have close communication with the school, and would like to make certain that Student was monitored throughout the day. They wanted to be notified when there was a concern.

40. The team did not change Student's placement from the SDC ED, and maintained counseling at 30 minutes, twice per month. The IEP offered transportation. The team also added counseling pertaining to college awareness for 15 minutes per month, services pertaining to vocational assessment, counseling, guidance, and career assessment for 15 minutes per month, other transition services for 15 minutes per month, and ESY. The team again agreed to submit referral paperwork for mental health services. Parents signed their consent to the IEP, while noting their disagreement that Student was doing well, as she remained at level 1, was failing two classes, and had eloped on September 21, 2010. Parents did not advise the IEP team of any concern that District was not providing transportation to Student and that Parents wanted District to provide it.

Student's Use of Marijuana, December 2010

41. On an unspecified date in December 2010, Student reported to her social worker that she had smoked marijuana in the bathroom at Quartz Hill. There was no evidence as to the date that this incident occurred. Nobody at Quartz Hill knew about the incident at the time it happened, rather, Father reported it to Quartz Hill on an unspecified date in December 2010. There was no evidence that the school disciplined Student regarding this incident.

Student's Lip Piercing, January-February 2011

42. While driving home from school on January 25, 2011, Mother noticed that Student's lip was pierced and swollen. In response to Mother's queries, Student stated she had pierced her lip in the school bathroom. By letter dated February 2, 2011, to Ms. Kreitz, the principal of Quartz Hill, Parents requested that the school investigate the incident and provide a written report of the investigation. Specifically, the letter stated, "…today we informed Mr. Stanford that on Monday, January 25, our daughter came from school with her lip or chin pierced, and she claimed she had done the piercing at school in the bathroom bleeding all over the place during 6th period." The letter also mentioned that Student's IEP required that she be "closely watched" while at school.

43. At hearing, Father testified that the lip piercing incident had happened on or about January 17, 2011, and that he reported it to the school on or about January 18, 2011. Father denied that the February 2, 2011, letter was dated on the day it was delivered to the school. He testified that it was written on an unknown date before February 2, 2011, such that the reference in the letter to "today" was not February 2, 2011. His testimony contradicted Mother's testimony, however. Based upon Mother's review of the February 2, 2011, letter to Ms. Kreitz, Mother testified she had learned of the lip piercing on January 25, 2011. Moreover, Father's testimony was not necessarily consistent with the school calendar, which revealed that January 17, 2011, was the Martin Luther King holiday and school was closed. Father conceded that he did not pay much attention to the school calendar.

44. Mr. Stanford completed his investigation of the lip-piercing incident, and reported his results to Father on February 7, 2011. Student told Mr. Stanford that she had gone to the bathroom with a pass on a Monday approximately two weeks previous to February 7, 2011, and had pierced her lip in the bathroom. Mr. Stanford and school security could find no evidence that the incident had happened in the school bathroom or on school property. Mr. Stanford received no information that there was blood in the bathroom or that any teachers had noticed that Student came to class with her lip newly pierced. Mr. Sanchez, Student's homeroom teacher, had not noticed that Student's lip was pierced. PowerSchool records also reflect that on February 7, 2011, a vice-principal had spoken with Father about Student's refusal to follow the level system, and Father advised that he would speak with Student to support the level system program.

February 22, 2011, IEP

45. On February 22, 2011, the District convened another IEP meeting. The team included Parents, Ms. Garner (Student's CASA), Mr. Stanford, Mr. Sanchez, Ms. Brooks, the school psychologist, and Ms. Sampson (Student's school-based counselor). The IEP stated that the IEP was being held at Parents' request due to a possible change of placement. The team reiterated the background and assessment information from the previous IEP's, including Parents' concerns about Student running away from school and home. The team noted Parents' report that Student was creative, artistic, bright, social, and good with kids.

46. The team updated Student's grades: Health 1 (96 percent); P.E. "F" (59 percent); Algebra 1A "B-" (82 percent); Life Science "B-" (82 percent); English "D" (63 percent); and Ceramics "A" (95 percent). The team noted that Student was receiving counseling outside of school through Valley Child Guidance. Her ceramics teacher reported that Student had a positive attitude. Her PE teacher reported that Student had improved her PE participation, and her grade should therefore improve. Her English grade had been diminished by not turning in a civil rights essay. Since the start of the semester, Student had earned level 4 three times, and levels 3, 2, and 1, once each. The accommodations with respect to supervision during unstructured time reiterated that the level program provided supervision on levels 1 and 2. The only mechanism the IEP specified for monitoring and supervising Student was the level system.

47. The team noted that Student had timely met the first benchmark for her behavioral goal to follow adult directives to move to a designated area and remain there when she was in an emotional state. The team also reported that Student had timely reached the first benchmark for her work completion goal. With respect to her transition goal, the team noted that Student had taken some interest inventories but had not completed the first benchmark of taking a specified survey.

48. The team reiterated and did not change Student's placement and services. The team again offered transportation, and there was no notation or any other evidence that Parents advised the team that they wanted transportation and the District was not providing it. The team commented that Student was responsive to strategies to de-escalate her emotions. The team noted that Student was integrated into two academic classes in other SDC classrooms, and was mainstreamed for one class. She was on level 4 in the 4-step level system. The team noted that Student had engaged in numerous incidents of defiance to authority during the first semester, some of which resulted in suspension. Further, low grades and refusal to participate and attend classes resulted in Student losing credit in three of her academic classes. The IEP notes stated that, in the current semester, Student was making consistent academic progress. She had improved her class attendance and participation, which improved her grades. The team commented that Student had also significantly improved with respect to obeying authority, and had no suspensions in the current semester. The team also noted that Parents remained concerned that Student may revert to negative behaviors. Parents requested that staff closely supervise Student, and that any proposed changes to successful classes should be made cautiously and Student's progress should be carefully monitored. Parents stated they wanted to have close communication with the school. They also wanted to make certain that Student was monitored throughout the day and that they be notified when there was a concern. There was no evidence that Parents mentioned the lip piercing incident at this IEP meeting.

49. The team noted that the mental health services assessment was in progress. The team determined that Student had earned only 20 credits during the previous semester, but that she could make up credits by attending summer school or with supplemental instruction. Parents reported that Student would be returning home from her foster placement on March 1. The IEP was sent home for Parents to review, and Mother signed her consent to the IEP, without comment, on March 19, 2011.

50. On March 17, 2011, the Sheriff's Department had Student admitted to Gateway Hospital, a mental health facility in Los Angeles, for approximately one week for an evaluation. Student returned to Quartz Hill thereafter.

April 25, 2011, IEP

51. On April 25, 2011, the District convened another IEP meeting, to review the results of the mental health services evaluation. The team included Parents, Student, Ms. Brooks, Mr. Sanchez, a District administrator, the school psychologist, and the psychologist from DMH. The IEP contained much of the same information as did previous IEP's. The team noted that Student had been in level 4 of the level program for the past several weeks. The team also noted that Student had met the first and second benchmarks in a timely fashion for the behavioral goal of following adult directives when in an emotional state and moving to and remaining in a designated area. The team noted that Student had also timely met the first and second benchmarks for the work completion goal. Student had not made further progress on her transition goal of completing a career assessment. The team agreed upon four DMH goals, which addressed identifying emotions, executive functioning, social behavior, and substance abuse. The team also developed a behavior support plan (BSP) to address Student's oppositional and eloping behaviors. The environmental factors section of the BSP provided that Student should sit in close proximity to the teacher, and if she needed to leave the classroom due to escalating behaviors she should be escorted to the office and placed in an area where she would be supervised and would not be in close proximity to an exit. Placement and services remained the same, except that DMH services were added. DMH would provide 250 minutes per month of counseling services at Valley Child Guidance, where Student had already been receiving services, one time per week, for 50 minutes per session, not to exceed 250 minutes per month. DMH recommendations also included family therapy, once every two weeks, not to exceed 150 minutes per month, a medication evaluation of Student, and follow-up by a psychiatrist if medications were prescribed. DMH also proposed that Student's therapist was to maintain regular contact with Student's classroom teacher to coordinate treatment, monitor progress, and maintain continuity of care.

52. The IEP again provided for transportation, and the IEP did not mention that the team discussed any transportation issues. There was no evidence that Parents mentioned to the team that District was not providing transportation.

53. The team discussed Student's progress. Student's general education art teacher reported that Student was doing well and had a grade of "B" in Ceramics. The special education teacher reported that Student was making excellent progress. Student's PE teacher reported that Student was improving her participation. Student's English score was diminished by not turning in an essay. She was earning a "B" in Science, and her Math grade had declined to a "C," as more difficult topics were introduced. The team reiterated that "all participants" agreed that Student had made consistent academic progress during the semester. She had improved her class attendance and participation, and the number of times she defied authority had significantly decreased. She had no suspensions during the semester.

54. Parents asked about residential treatment, and the DMH representative explained the circumstances under which that would be suitable. Parents stated they wanted to have close communication with the school. Parents also wanted to make certain that Student was monitored throughout the day and that they be notified when there was a concern. Parents remained concerned that Student's negative behaviors may start again, and they requested staff supervise Student closely.

55. Parents consented to the IEP, with some corrections. They noted that Quartz Hill was Student's school of residence, since she was no longer in foster care, in contrast to a reference in the IEP to Student living in foster care and attending a non-residence school. Parents also noted that Student had received new eyeglasses, contrary to the outdated statement in the health section of the IEP.

Student Eloped, May 6, 2011

56. Father testified that he drove Student to school on the morning of May 6, 2011. Father also testified that when he arrived at school in the afternoon of May 6, 2011, to take her back to her foster home after school, Student did not appear at their regular pick-up spot nearby the gate. Father testified that he went to the school attendance office, and was told by a person whose name he did not know that Student had been in school for a few periods in the morning, and did not know where Student was after that time. Father filed a report with the Sheriff's Department, and Student was located approximately six weeks later. Father did not recall the date Student was located. Student was located at a former foster home. Father learned that while she was gone, Student had stayed with a variety of people, including former foster parents and her biological mother and grandmother.

57. Father was the next-to-last witness to testify at hearing, and he was the only witness who testified as to any specific facts relating to this event. Mother was not asked to testify to this event. Mr. Stanford was the only District employee of whom Parents inquired during the hearing regarding this event, and he stated only that he was aware that Father had stated that Student had not come home from school and that Father thought that Student had run away from school. Parents produced no documentation as to this event, such as the report of the Sheriff's investigation.

58. After Student was located, she was hospitalized and did not return to Quartz Hill. Ultimately, as a result of an August 29, 2011, IEP meeting, District and DMH placed Student in a therapeutic residential placement at Devereux. Student has remained at Devereux through the time of the hearing.

Student's DIS Counseling Sessions

59. At some point after Student ceased attending Quartz Hill, Student told Parents that she had not received her school-based counseling sessions. Student did not receive the sessions at a set time, rather, Ms. Sampson, Student's DIS counselor at Quartz Hill, would schedule each individual session to conform to Student's schedule. District records reflected

that Ms. Sampson provided Student four sessions in November 2010, one session in December 2010, two sessions in January 2011, one session in February 2011, and one session in March 2011. Ms. Sampson also believed that she had occasionally failed to record a session. Parents first raised this issue at the August 29, 2011, IEP meeting, when Student was hospitalized. At that time, Mr. Le Bat, the District's coordinator of psychological services, offered to provide compensatory counseling services to Student when she returned to school. Mr. Le Bat made this offer to appease Parents and to attempt to avoid conflicts. He believed that Student was not actually owed any counseling services, because she met with a school psychologist every time she became emotionally elevated and was directed to go to the school psychologist's office pursuant to the goal in her IEP. District did not keep a log of these visits. Subsequently, Mr. Mekel calculated that Student had missed three hours of DIS counseling sessions, based upon the counseling logs, the school calendar, and Student's attendance. Mr. Mekel offered to provide seven hours of compensatory counseling services to Student. Parents have never accepted these offers. At hearing, Father's testimony as to these offers and his reasons for not accepting the offers varied. During Father's direct testimony, he testified that Parents did not want compensatory counseling services when Mr. Le Bat offered them or thereafter, because Parents were not sure that Student needed compensatory counseling services. Rather, she had needed counseling services during the 2010-2011 school year, when District was supposed to have provided them. On cross-examination, he disputed that he had denied the offer of services by Mr. Le Bat, rather, he stated that he did not consider Mr. Le Bat to have made any offer of counseling services because Mr. Le Bat had not specified a particular number of hours. Father also disputed that he had declined Mr. Mekel's subsequent offer of seven hours of compensatory services, because the offer was not in writing and Father had not responded to it in writing. However, Father conceded that he wondered what benefit Student would receive from compensatory counseling services.

CONCLUSIONS OF LAW

Burden of Proof

1. The petitioner in a special education due process hearing has the burden of proving his or her contentions at the hearing. (*Schaffer v. Weast (*2005) 546 U.S. 49, 56-57 [126 S.Ct. 528].) As the petitioning party, Student has the burden of persuasion in this case.

Contentions

2. Student contends that District denied Student a FAPE during the 2010-2011 school year by enrolling Student in Pete Knight High School and in Eastside High School without consulting Parents, who held educational rights at all relevant times. Student also contends that District denied Student a FAPE by failing to implement Student's operative IEP's during the 2010-2011 school year, so as to provide her supervision and monitoring, and transportation. Student further contends that District failed to provide all of the DIS counseling required by the October 4, 2010, IEP and subsequent IEP's during the 2010-2011 school year. The relief Student seeks for these alleged violations are orders that the District

comply with the law and her IEP's in the future. Student does not seek any compensatory education, and she provided no evidence that she required any compensatory education.

3. District contends that it acted properly in enrolling Student in the schools selected by Student's foster parents, pursuant to its statutory obligation to enroll foster children in schools, and that Student suffered no educational harm by reason of being enrolled in these schools. District contends that Student's foster mother refused bus transportation to Quartz Hill, and that Parents did not pursue the issue with District, but rather followed the Superior Court's order to transport Student and received reimbursement from DCFS for providing the transportation. District contends that it properly monitored Student in accordance with her IEP. District further contends that it offered make-up counseling sessions, but Parents refused them. District contends that none of the alleged procedural violations caused harm to Student, and that it did not materially fail to implement the IEP's.

FAPE

4. Pursuant to California special education law and the Individuals with Disabilities in Education Act (IDEA), as amended effective July 1, 2005, children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. §1400(d); Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the state involved, and conform to the child's IEP. (20 U.S.C. § 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(29).) Similarly, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).) In California, related services may be referred to as designated instruction and services (DIS). (Ed. Code, § 56363, subd. (a).)

5. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) Citing *Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (*Rowley*), the court also recognized the importance of adherence to the procedural requirements of the IDEA, but determined that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id*. at 1484.) This principle was subsequently codified in the IDEA and Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in

the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

6. For purposes of the IDEA, the term "parent" means a biological or adoptive parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. (20 U.S.C. § 1401(a)(23); 34 C.F.R. § 300.30(a)(1) & (b).)[12]

7. With respect to parental participation, the IDEA and California law state that the parents of a child with a disability must be afforded an opportunity to participate in IEP meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child. (34 C.F.R. § 300.501(b), (c); Ed. Code, § 56341. Written notice must be given to the parents of a child with a disability a reasonable time before a public agency proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415 (b)(3); Ed. Code, § 56500.4.)

8. In *Rowley, supra*, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the substantive requirements of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id*. at 201.) In *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, the court acknowledged that there had been confusion in the Ninth Circuit regarding whether the IDEA required school district to provide special education students with "educational benefit," "some educational benefit" or a "meaningful educational benefit." The court found that, under *Rowley*, all three phrases referred to the same standard. "School districts must, to 'make access meaningful,' confer at least 'some educational benefit' on disabled students." (*J.L. v. Mercer Island School Dist., supra*, 592 F.3d at p. 951, fn. 10.) In *County of San Diego v. California Special Education Hearing Office, et al.* (1996) 93 F.3d 1458, 1467, the court specified that educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.

[12] All subsequent references to the Code of Federal Regulations are to the 2006 version, unless otherwise indicated.

IEP

9. The IEP is a written document for each child who needs special education and related services. The contents of the IEP are mandated by the IDEA, and the IEP must include a statement of the special education and related services to be provided to the child, and the anticipated frequency, location, and duration of those services. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd. (a)(7).)

10. Minor failures by a school district in implementing an IEP should not automatically be treated as violations of the IDEA. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811, 821.) Rather, only a material failure to implement an IEP violates the IDEA. (*Id*. at p. 822.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Ibid.*) This standard does not require that the child suffer demonstrable educational harm for there to be a finding of a material failure. (*Ibid.*) However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. (*Ibid.*)

School Enrollment of Foster Children

11. Assembly Bill (AB) 490, passed by the California legislature in 2003, added new provisions to the California Education Code pertaining to the education of foster children, including Education Code section 48853.5. Section 48853.5, as it existed in 2010, which is the relevant time period in this matter, provided for the enrollment of foster children in school. Education Code Section 48853.5, subdivision (b)(1), provided that each local educational agency, including a school district or SELPA, designate a staff person as the educational liaison for foster children, who was to assist in the proper educational placement and school enrollment of foster children. If the liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, agreed that the best interests of the foster child would best be served by his or her transfer to a school other than the "school of origin," the foster child was to immediately be enrolled in the new school. (Ed. Code, § 48853.5, subd. (d)(4)(A).) "School of origin" was defined as the school that the foster child attended when permanently housed or the school in which the child was last enrolled. (Ed. Code, § 48853.5, subd. (e).) The new school was to immediately enroll the foster child, even if the foster child was unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. (Ed. Code §48853.5, subd. (d)(4)(B).) In May 2006, the California Foster Youth Education Task Force (Task Force) which included as members a variety of children's and educational organizations, including the California Department of Education, published a document entitled "Frequently Asked Questions and Answers About AB 490" (hereinafter, *Questions and Answers*). The Task Force specified that the fact that a foster child received special education services did not change a new school's obligation to immediately enroll the child. (*Id.* at p. 11.) *Questions and Answers* interprets Education Code section 48853.5, subdivision. (d)(4)(B) to mean that when a foster child changes schools, her new school must immediately enroll her, even if the child does not have the

items usually required for enrollment, such as proof of residency, immunization records, and such. (*Id.* at *pp*. 5 and 11.) Immediate enrollment is interpreted to mean that the child is immediately registered and allowed to attend classes. (*Id.* at p.11.) These discussions in *Questions and Answers* of the requirement that a new school must immediately enroll a foster child do not specify that such a requirement is predicated upon a determination by the educational liaison and the holder of educational rights that the foster child should be enrolled in a new school, as prescribed by Education Code section 48853.5, subdivision (d)(4)(A).

Analysis

Issue 1: Enrollment at Pete Knight and Eastside

Pete Knight

12. Parents' contention regarding Student's enrollment in, and attendance at, Pete Knight has two aspects. First, whether District's enrollment of Student at Pete Knight constituted a procedural denial of a FAPE because District acted without parental participation. Second, whether District denied Student a FAPE because District enrolled her in Pete Knight and placed her in general education classes, such that her IEP of February 25, 2010, was not implemented. Under either aspect, Student failed to demonstrate that District denied Student a FAPE by enrolling her in Pete Knight.

13. As was stated in Conclusion of Law 7, decisions concerning the placement of a child receiving special education should include the parents. As was stated in Conclusion of Law 5, procedural violations are only actionable if they impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. As was stated in Conclusion of Law 10, a failure to implement the IEP is only actionable if the failure is material. A material failure to implement the IEP occurs when there is more than a minor discrepancy between the services a school provides to a special education student and the services required by the child's IEP.

14. Circumstantial evidence reflected that Student's foster mother, Ms. Dobson, enrolled Student at Pete Knight. Therefore, District considered itself legally obligated to enroll Student in Pete Knight under the provisions of Education Code section 48853.5, subdivision (d)(4)(B), as interpreted by *Questions and Answers, supra*. Since there was no evidence that District involved an educational liaison and the holder of educational rights in the decision to enroll Student in a new school, pursuant to Education Code section 48853.3, subdivision (d)(4)(A), it is not clear that District's position is correct. Further, under the IDEA's procedural safeguards, Parents would normally have been required to consent to a change in placement following an IEP team meeting. However, District did not deprive Student of a FAPE by enrolling her at Pete Knight without parental consent. The evidence was undisputed that the enrollment was not initiated by District, but by Student's foster parent during a time when Student was no longer physically residing with Parents and no

longer physically residing in the same part of the District as Parents did. District did not know, and had no reason to know, that the enrollment was not authorized by Parents, and that Parents were not involved in the change of placement. Accordingly, Student did not demonstrate that District deprived Student and Parents of their procedural rights under the IDEA. To the contrary, the undisputed evidence showed that once the Superior Court issued appropriate orders to clarify where Student should attend school, District fully complied with those orders. Student's brief status as a pupil at Pete Knight did not *significantly* impede Parents' opportunity to participate in the decision making process regarding the provision of a FAPE.

15. Further, Student's enrollment in and attendance at Pete Knight occurred for such a minimal amount of time that Student's right to a FAPE was not impeded, and Student was not deprived of any educational benefits. In this regard, Student's IEP of February 25, 2010, contained no academic goals; rather, the goals and counseling services agreed upon by the IEP team were directed at Student's behaviors. There was no evidence that Student had any behavioral issues whatsoever while at Pete Knight for two days. Rather, the evidence reflected the opposite. One would expect that, had Student misbehaved while at Pete Knight, her homeroom teacher would have remembered her, but he did not. She behaved so much as did her typical peers at Pete Knight that she was not noticed.

16. Similarly, Student's brief enrollment and attendance in the general education program at Pete Knight, without reference to her IEP, was not a material failure to implement her IEP. As a practical matter, particularly at the very beginning of the school year, it is not uncommon for a pupil's IEP not to be fully implemented for a brief period of time, even when the school district is aware that the child is a special education student and has an IEP, because the school must schedule and arrange the appropriate services, transportation, and placement. In this case, the failure to implement Student's IEP for two days at the beginning of the 2010-2011 school year was not material.

17. Based upon Findings of Fact 1-23, and Conclusions of Law 1-16, Student was not deprived of a FAPE on either procedural or substantive grounds by reason of her enrollment at Pete Knight.

Enrollment at Eastside

18. Student's enrollment in, and attendance at Eastside on August 16, 2010, at Ms. Brothers's request, raises the same two sub-issues as did her enrollment at Pete Knight. First, District enrolled Student at Eastside at Ms. Brothers's request, which raises the issue of a procedural denial of a FAPE. Second, Student's enrollment at Eastside raises the issues of whether her IEP was implemented so that she received a substantive FAPE. Conclusions of Law 5, 7, and 10, regarding parental participation and procedural and substantive denials of FAPE, and which were discussed above with respect to Student's enrollment at Pete Knight, are incorporated here by reference.

19. As with Student's enrollment at Pete Knight, District's reliance on Education Code section 48853.5, subdivision (d)(4)(B) as justification for enrolling Student at Eastside at Ms. Brothers's request may not be correct. There was no evidence that District involved an educational liaison and the holder of educational rights in the decision to enroll Student at Eastside, pursuant to Education Code section 48853.5. However, District did not deprive Student of either a procedural or substantive FAPE by reason of enrolling her at Eastside on August 16, 2010. District did not notify Parents of Student's enrollment at Eastside, and Parents did not remember when they first learned that Student was attending Eastside. However, when Student advised Mother that Student was attending Eastside, Mother did not notify the District that she did not want Student to attend Eastside. Rather, Mother immediately called Ms. Garner, Student's CASA, and Parents' lawyers, among other people, and reported that Student was attending Eastside, and that Parents wanted Student to attend Quartz Hill. Ms. Meeks, in her e-mail correspondence with Student's social worker, documented that on August 13, 2010, Ms. Garner advised Ms. Meeks that Student would be attending Quartz Hill, and that on August 24, 2010, Ms. Garner advised Ms. Meeks that Student was attending Eastside. Therefore, based upon Ms. Garner's conversations with Ms. Meeks, the evidence reflects that Parents knew *by no later than* August 24, 2010, that Student was attending Eastside. August 24, 2010, is only six school days from August 16, 2010, the day District enrolled Student at Eastside. There was no evidence that Parents' lack of knowledge of Student's enrollment at Eastside for this short period of time impeded Student's right to a FAPE, *significantly* impeded the Parents' opportunity to participate in the decision making process regarding the provision of a FAPE to Student, or caused a deprivation of educational benefits to Student.

20. Additionally, as with Student's enrollment at Pete Knight, Student's enrollment at Eastside was not initiated by District, but by a foster parent who lived with Student in a different part of the District than Parents did. There was no evidence that District knew, or should have known, that Parents had not authorized or initiated the change of placement. Indeed, even when Parents learned of Student's enrollment at Eastside, they did not notify the District that Mr. Brothers had acted without Parents' knowledge or consent. Consequently, the District's enrollment of Student at Eastside at Ms. Brothers's request did not constitute a procedural denial of a FAPE. Rather, the undisputed evidence showed that when the Superior Court issued orders to clarify where Student should attend school, District fully complied with those orders.

21. Furthermore, there was no evidence that District materially failed to implement Student's IEP by enrolling her at Eastside. Student was enrolled at Eastside for approximately three weeks. During that time, she was placed in a special class for ED students, and was enrolled in special education classes, all as called for in her February 25, 2010, IEP, to which Parents consented. There was no evidence that these classes were unsuitable for Student. Finally, both Mr. Cook, Student's teacher, and Eastside's vice-principal, Ms. Stanley, asserted in writing that Student had made progress while at Eastside. Indeed, Father personally approved the wording of Ms. Stanley's letter to this effect.

22. Based upon Findings of Fact 1-23, and Conclusions of Law 1-21, Student did not demonstrate that District deprived Student of a FAPE by reason of Student enrolling in, and attending, Pete Knight and Eastside

Issue 2: Monitoring and Supervision

23. District did not materially fail to implement Student's IEP with respect to monitoring and supervision of Student so as to deny Student a FAPE.

24. As was stated in Conclusion of Law 10, a failure to implement the IEP is only actionable if the failure is material. A material failure to implement the IEP occurs when there is more than a minor discrepancy between the services a school provides to a special education student and the services required by the child's IEP.

25. Quartz Hill was a general education high school campus. District was aware of Student's propensity to elope, and Parents had consistently advised the District of Student's propensity to elope and of their desire that Student be closely monitored. However, the IEP did not provide that Student would have a one-to-one aide, and Parents never requested such assistance. Nor did the IEP require the District to monitor Student's conduct while she was in the bathroom. Moreover, the IEP provided that Student would participate in the level system as part of Student's SDC-ED placement. The level system as applied in Student's SDC ED at Quartz Hill was discussed at each IEP from October 4, 2010 onward. The level system was designed to encourage Student to improve her behavior so that she could rise to higher levels and obtain more privileges, such as less monitoring and supervision during unstructured times. The level system was the primary mechanism specified in every IEP during the 2010-2011 school year by which Student was to be monitored and supervised. In this regard, the IEP's of December 1, 2010, and February 22, 2011, specified that supervision and monitoring were components of levels 1 and 2.

26. The October 4, 2010, IEP included some additional monitoring, by providing for an escort to and from the bathroom when Student was excused from class to go to the bathroom. The April 25, 2011, IEP also included some additional monitoring as part of the BSP that the team developed. The BSP specified that if Student needed to leave the classroom due to escalated behaviors, she would be escorted to the office and placed in an area where she was supervised and was not in proximity to an exit.

27. Parents consented to every IEP relevant to this matter. There was no evidence that Parents had ever asked any questions about the operation of the level system. Moreover, Parents never advised the IEP team that they did not wish Student to participate in the level system, even after the various behavioral incidents of September 2010, November 2010, December 2010, and February 2011, occurred. To the contrary, Parents viewed Student's attainment of higher levels as a marker of progress. This is reflected in their comment to the IEP of December 1, 2010, that they disagreed with the IEP team conclusion that Student was making progress, as she was only at level 1 in the level system. A PowerSchool log entry on February 7, 2011, reflected that Father and Quartz Hill's vice-principal had discussed

Student's refusal to follow the level system, and Father had responded that he would speak with Student to help support the level system program.

28. At hearing, Parents testified that they thought that Student would still be accompanied to the bathroom, and between classes, and during other unstructured times whenever she was on campus on a one-to-one basis, regardless of the level she had attained in the level system. In view of the circumstances described in Conclusions of Law 25 through 27, this belief was not reasonable. Moreover, their testimony on this issue was not persuasive. First, Parents did not offer any specific evidence to support their belief that Student would be so constantly supervised and monitored. Parents did not identify any District personnel, or any specific conversation, during which District had advised Parents that the freedoms which marked levels 3 and 4 of the level system would not apply to Student. Parents did not identify any date on which they were so advised, or any documentation of any such advice. Second, Parents' testimony and conduct on many matters did not enhance their credibility, or reflected that they did not have a clear recollection of events. For example, often Parents were unable to remember dates on which material events occurred, or when they learned of material events. Further, Mother's testimony regarding her reason for enrolling Student at Quartz Hill on August 13, 2010, made no sense when compared to the documented chronology of events. Additionally, Mother submitted an enrollment form to Quartz Hill on August 13, 2010, which untruthfully stated that Parents' address was Student's address and that Student was not in foster care. As for Father, he denied that Parents had learned of the lip-piercing on January 25, 2011, although the letter Parents wrote to Ms. Kreitz dated February 2, 2011, specifically stated that Parents learned of the incident on January 25, 2011. Father also accused the District of involving itself in the Superior Court proceedings so as to keep Student at Eastside, but there was no evidence whatsoever to support his position.

29. Under all of these circumstances, Parents' interpretation of the monitoring and supervision that the IEP's provided is not reasonable. Moreover, their testimony as to a subjective belief that they held two years ago regarding the IEP's monitoring and supervision provisions is not persuasive.

30. Additionally, Student did not demonstrate that any of the incidents of which she complains were due to a material failure of the District to implement the monitoring and supervision provisions of Student's IEP.

31. With respect to the alcohol incident of November 9, 2010, the weight of the evidence demonstrated that the alcohol use occurred in the bathroom. Student's IEP's did not provide for monitoring or supervision while Student was in the bathroom. Indeed, the alcohol incident demonstrated that District was actually closely supervising and monitoring Student during unstructured time. Student's possession of alcohol was only discovered by Mr. Niemeyer's close observation of the behavior of Student and her peers on campus during their lunch period, both in person and by means of a surveillance camera. Further, upon first observing the suspicious activity of Student and her peers, Mr. Niemeyer not only personally intervened in an attempt to stop any misbehavior before it occurred, but he also alerted other

school personnel to the unfolding situation, and requested that they also observe Student and her peers. That Student was nevertheless able to thwart the District's close monitoring and supervision on that day and violate school rules illustrates that even close monitoring and supervision cannot guarantee that a teenager on a general education high school campus will avoid trouble.

32. Student did not demonstrate that her alleged use of marijuana in the school bathroom in December 2010 occurred due to a failure of the District to implement Student's IEP. First, the sole evidence that the marijuana incident occurred at Quartz Hill was Student's statement to her social worker, and neither Student nor her social worker testified at hearing. Also, Student stated that the event happened in the bathroom. Student's IEP's did not state that Student would be supervised or monitored in the school bathroom.

33. Student did not demonstrate that Student's piercing her lip in the school bathroom in January 2011 occurred due to a failure of the District to implement the monitoring and supervision aspects of Student's IEP. As with the alleged marijuana incident, Student's statements outside of the hearing were the only evidence that Student pierced her lip at school. There was no evidence that she had been bleeding, and no evidence that any school personnel noticed that she had pierced her lip. Further, according to Student, she pierced her lip in the bathroom, and Student's IEP's did not state that she would be supervised or monitored in the bathroom.

34. Finally, Student did not demonstrate that Student's eloping from school occurred due to a material failure, or any failure, of the District to monitor and supervise Student. This issue involves but two incidents during the approximately nine-month period that Student attended Quartz Hill. The first incident occurred on September 21, 2010, and the evidence only demonstrated that Student ran off campus. There was no evidence as to how Student managed to elope, where she went, and how and when she was located. There was no evidence that the Student's eloping occurred as a consequence of any failure to monitor or supervise Student.

35. The second incident occurred on May 6, 2011, when Father arrived at school to pick-up Student at the end of the school day and Student did not appear. Father was the only witness who testified to this event. Despite the fact that law enforcement was involved in investigating this event and in searching for Student, Parents presented no evidence as to why Student did not meet Father after school on that day for the ride home. There was no evidence that Student's failure to meet Father after school on that day was due to any failure of the District to monitor or supervise Student.

36. Based upon Findings of Fact 1-58, and Conclusions of Law 1-10, and 23-35, Student did not meet her burden of persuasion that District materially failed to implement her IEP's during the 2010-2011 school year with respect to monitoring and supervision, so as to deprive Student of a FAPE.

Issue 3: Counseling Services

37. District did not materially fail to implement Student's IEP of October 4, 2010, and subsequent IEP's during the 2010-2011 school year with respect to DIS counseling so as to deprive Student of a FAPE.

38. As was stated in Conclusion of Law 10, a failure to implement the IEP is only actionable if the failure is material. A material failure to implement the IEP occurs when there is more than a minor discrepancy between the services a school provides to a special education student and the services required by the child's IEP. A child's progress may be probative of whether there has been a material failure to implement the IEP.

39. District conceded that Student missed three hours of DIS counseling sessions, based upon the counseling logs, and the school calendar. The District offered to make-up counseling sessions on at least two occasions, which Parents refused. Father's testimony as to why he did not accept the offer of make-up counseling sessions was contradictory and not persuasive, but he did express the belief that Student needed them during the 2010-2011 school year and did not need them as make-up sessions. Student did not seek compensatory education as part of her Complaints, rather, she only desired findings that, as to the various issues presented, District denied Student a FAPE and an order that District obey the law and Student's IEP's.

40. The evidence demonstrated that the District's failure to provide three hours of DIS counseling was not a material failure to implement Student's IEP's, because Student's IEP's were focused to a large degree on Student's behavioral issues, and behavioral supports were inherent in Student's program. In this regard, Student had no academic goals. Student was placed in an SDC-ED which focused on behaviors and employed behavioral strategies such as a level system and a token economy. One of Student's behavioral goals involved Student obtaining counseling from the school psychologist when her behaviors escalated, separate from any DIS counseling she received. Further, it is significant that Student's overall behavior at school improved as the school year progressed. She had no suspensions in the second semester, she obtained higher levels in the level system, her grades improved, and she made progress on her goals. Finally, there was no evidence that the District's failure to provide the counseling sessions caused Student any harm, or that had Student received the counseling sessions she would not have engaged in the various undesireable behaviors at school.

41. Based upon Findings of Fact 1-10, and 24-59, and Conclusions of Law 1-10, and 37-40, Student did not demonstrate that District materially failed to implement the subject IEP's so as to deprive her of a FAPE with respect to DIS counseling services.

Issue 4: Transportation

42. District did not fail to materially implement the provisions in Student's IEP's that District would provide transportation so as to deny Student a FAPE.

43. As was stated in Conclusion of Law 10, a failure to implement the IEP is only actionable if the failure is material. A material failure to implement the IEP occurs when there is more than a minor discrepancy between the services a school provides to a special education student and the services required by the child's IEP.

44. The District attempted to provide transportation, at least on a temporary basis, to Quartz Hill, and Ms. Brothers refused it, since she had enrolled Student at Eastside. Ms. Brothers's conduct with respect to Student's high school enrollment conflicted with Parents' wishes, thereby requiring Superior Court intervention with respect to where Student would attend school. Based upon representations made at the hearings on September 1, 2010, and September 13, 2010, which District did not attend, the Superior Court at first ordered DCFS to provide funding for Student to be transported between Student's foster home and Quartz Hill, and then, at the hearing on September 13, 2010, the Superior Court ordered DCFS to pay Parents to transport Student to and from Quartz Hill. Additionally, the Superior Court ordered that Parents would have unmonitored visitation for that purpose.

45. District was aware of these Superior Court orders, and Parents and DCFS obeyed them. Thus, Parents undertook to transport Student to and from Quartz Hill, and DCFS provided funds to Parents for their efforts. District did not provide transportation to Student when she finally enrolled in and began to attend Quartz Hill. With the exception of the BSR form that Mother filled out on September 7, 2010, when she enrolled Student at Quartz Hill for the final time, Parents made no request of the District to provide transportation to Student once Student finally enrolled in and began attending Quartz Hill. Parents attended every IEP meeting held after September 7, 2010, and never advised the team that the transportation was not being provided, or requested the IEP team to provide the transportation that was offered in the IEP's.

46. There was no clear evidence as to why the District did not provide transportation to Student as a result of the September 7, 2010, BSR form. Ms. Meeks recalled that the District's program director had not approved transportation between Ms. Brothers's home and Quartz Hill, but no documentation of the program manager's determination was offered at hearing, and there was no evidence that Parents had been notified of any such determination. Additionally, there was evidence that District ceased transporting Student because Ms. Brothers had previously refused such transportation, and also that the District had knowledge of the Superior Court orders regarding transportation. As a practical matter, if District had provided transportation pursuant to the September 7, 2010, BSR form, there was no evidence that Ms. Brothers would have cooperated and put Student on the bus. In any event, in view of the Superior Court's orders both prior to and subsequent to September 7, 2010, and the conduct of Parents in transporting Student to and from school and accepting DCFS funds to do so, there was no reason for the District to provide transportation pursuant to the BSR form that Mother submitted on September 7, 2010, or pursuant to any previous BSR form Mother submitted. Therefore, the issue as to District providing transportation was mooted by the Superior Court orders of September 1, 2010, and September 13, 2010; by Parents' providing transportation and receiving DCFS

reimbursement for doing so; and by Parents' never raising the transportation issue with the IEP team.

47. Based upon Findings of Fact 1-10, 12-16, 18-21, 24-33, 36-40, 42-43, 45-56, and Conclusions of Law 1-10, and 42-46, Student was not deprived of a FAPE by reason of any conduct of the District regarding Student's transportation.

ORDER

All of the relief sought by Student in her Complaints is denied.

PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: March 29**,** 2013

_____/*s*/_____
ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings