

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT AND SACRAMENTO
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2013010137

DECISION

Administrative Law Judge (ALJ) Peter Paul Castillo, from the Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on March 11 through 14, 2013.¹

Attorney Daniel Shaw represented Student, and assisted by Attorney Christian Knox during the first day of hearing. Student's Father and Sister-in-Law were present during the entire hearing. Student's Brother attended the first day of hearing. A Spanish language interpreter was provided to Father. Student did not attend the hearing.

Attorney Heather Edwards represented the Sacramento County Office of Education (SCOE). Robin M. Pierson, Assistant Superintendent of Special Education, attended all of the hearing.

Attorney Daniel A. Osher represented the Sacramento City Unified School District (SCUSD). Rebecca Byrant, District Special Education Manager and Special Education Local Plan Area (SELPA) Director, attended all of the hearing.

Student filed a request for a due process hearing (complaint) on January 4, 2013. On February 21, 2013, OAH granted the motion of the Riverside Unified School District (RUSD) and the Riverside County Office of Education (RCOE) to bifurcate this proceeding so that Student's issues for hearing against RUSD and RCOE would be heard separately

¹ Administrative Law Judge Margaret Broussard observed the entire hearing.

from those against SCOE and SCUSD.² On February 21, 2013, OAH continued the matter against SCOE and SCUSD. At the end of hearing, at the parties' request, the ALJ continued the matter to allow the parties to file written closing argument by March 25, 2013. The parties filed their closing briefs on March 25, 2013, and the matter was submitted for decision.³

ISSUES⁴

Issue 1: During the 2012-2013 school year (SY), did SCUSD and SCOE deny Student a free appropriate public education (FAPE) by failing to:

- a) Provide adequate, measurable goals in all areas of need;
- b) Offer Student an educational placement that met his unique needs;
- c) Offer Student adequate mental health services;
- d) Develop a behavior support plan (BSP);
- e) Develop an adequate individual transition plan (ITP); and
- f) Make an offer of extended school year (ESY) services?

Issue 2: During SY 2012-2013, did SCOE deny Student a FAPE by violating Parent's and Student's procedural rights, which prevented Parent from meaningfully participating in Student's educational decision-making process and denied Student an educational benefit, by failing to:

- a) Hold a timely individual education program (IEP) meeting;
- b) Provide an assessment plan within 15 days of Parent's request; and

² The hearing regarding RUSD and RCOE is scheduled for hearing for May 13 – 16, 2013.

³ The closing briefs have been marked as exhibits. Student's brief has been marked as Exhibit S-31, SCOE's brief has been marked as Exhibit D-29 and SCUSD's brief has been marked as Exhibit D-30.

⁴ The issues were framed in the February 13, 2013 Order Following Prehearing Conference, and further clarified at hearing. The ALJ has reorganized the issues for the sake of clarity.

- c) Provide Parent with a copy of the December 14, 2012 IEP?

Issue 3: During SY 2012-2013, did SCUSD deny Student a FAPE by violating Parent's and Student's procedural rights, which prevented Parent from meaningfully participating in Student's educational decision-making process and denied Student an educational benefit, by failing to:

- a) Attend Student's November 2, 2012 IEP team meeting; and
- b) Make an offer of FAPE?

REQUESTED REMEDIES

Student requests that SCUSD and SCOE be required to provide him with compensatory education in the form of individualized tutoring, behavioral services, social skills training, mental health services, and an intensive reading program such as Lindamood Bell. Additionally, Student requests that SCUSD and SCOE be required to convene an IEP team meeting and offer Student a residential placement in a certified facility, such as Devereaux-Texas.

CONTENTIONS OF THE PARTIES

Student contends that SCOE failed to implement his last agreed-upon and implemented IEP when he was transferred from the Juvenile Hall in Riverside County to Sacramento County Juvenile Hall, and also failed to convene a timely 30-day interim IEP team meeting. He contends that when SCOE convened an IEP team meeting, SCOE's IEP offer was not adequate because SCOE did not offer appropriate academic, mental health, behavioral and social-emotional goals and services to meet Student's unique needs, nor an adequate ITP. Student further contends against SCOE that it failed to timely develop an assessment plan after Father's November 2012 request. Student alleges that SCUSD is jointly liable for these failings, even though SCOE operates the juvenile hall school, because Father resides within the geographical boundaries of SCUSD, and SCUSD is participating at present in the assessment process. Finally, Student contends that he needs an out-of-state residential placement to meet his educational needs as he cannot make meaningful educational progress in any less restrictive setting due to his behavioral and mental health needs.

SCOE asserts that it timely convened Student's interim IEP team meeting and was unavoidably delayed by the difficulty in determining who held Student's educational rights. SCOE argues that because the Sacramento County Probation Office (SCPO) operates the Juvenile Hall that its ability to provide special education services is limited by SCPO's decisions, such as which unit a student is housed. Additionally, SCOE claims that it needs to await the results of the pending assessments before it can make an appropriate IEP offer.

SCUSD contends that it is not yet responsible for providing Student with a FAPE because he is now incarcerated in Juvenile Hall. Both SCOE and SCUSD contend that Student does not require a residential placement to obtain educational benefit. Finally, SCOE contends that the obligation to make a residential placement offer rests upon SCUSD only, as it will be responsible for Student's education once he leaves Sacramento County Juvenile Hall (Juvenile Hall). SCUSD disputes that claim.

FACTUAL FINDINGS

Jurisdiction and Factual Background

1. Student is a 16-year-old boy in the 10th grade, now incarcerated in Juvenile Hall, which is the educational responsibility of SCOE, which operates the school within Juvenile Hall. Student's Father resides within SCUSD's geographical boundaries, and his Mother is deceased. Student entered Juvenile Hall at the beginning of September 2012, when he transferred from Riverside County Juvenile Hall. Student started attending the Juvenile Hall school on or about September 5, 2012.

2. The Palo Verde Unified School District (Palo Verde) found Student eligible for special education services in January 2007 under the category of specific learning disability (SLD), and he began to receive special education services. During SY's 2007-2008 and 2008-2009, Student alternated between Palo Verde and RCOE schools for disciplinary and juvenile justice reasons. During this time, emotional disturbance (ED) was added to his IEP as the primary category for special education eligibility, and SLD was made a secondary eligibility category. Student attended a RCOE school through SY 2010-2011, and then attended a school operated by RUSD at the start of SY 2011-2012. Student ran away from his group home placement at the end of 2011. When he was found six months later, he entered the Riverside County Juvenile Hall and attended the school operated there by RCOE. Sometime before the start of SY 2012-2013, Student's father moved into the geographical boundaries of SCUSD.

Educational Program in Effect at Time of Transfer to Sacramento

3. If a child with a disability transfers from a school district located in a different SELPA within the State of California to a district within California during the academic year, the local educational agency (LEA) into which the child transfers must provide the child with a FAPE, including services comparable to those described in the student's previously approved IEP. It must do so in consultation with the parents, until the LEA develops a new IEP that is consistent with federal and state law. The LEA may provide the interim program for a period not to exceed 30 days, by which time an IEP team meeting must be held.

4. Student contends that Student's last agreed-upon and implemented educational program was his November 14, 2011 IEP, written by RUSD, which placed Student in a special day class (SDC) for students, with one hour a day of counseling. That IEP placed

Student in the SDC for 86 percent of the school day. Student also was to receive extended school year services (ESY) in a SDC placement for ED students. SCOE and SCUSD contend that Student's last agreed-upon and implemented educational program was the August 2, 2012 IEP, written by RCOE, which provided for special academic instruction for 245 minute a day, with 60 minutes a year each of vocational counseling and career awareness. The November 14, 2011 IEP had one social-emotional goal, while the August 2, 2012 IEP only contained academic goals.

5. During the hearing, Student introduced a copy of RCOE's August 2, 2012 IEP, which did not contain any signatures from the IEP team meeting attendees. Either Student's surrogate parent or Father attended this IEP team meeting by telephone.⁵ Student asserted that the person who held Student's educational rights had not consented to the August 2, 2012 IEP. In contrast, the November 14, 2011 IEP had the signature of Student's surrogate parents consenting to that IEP.

6. At the hearing, SCOE and SCUSD did not produce a different copy of the August 2, 2012 IEP with the signature of the holder of Student's educational rights. SCOE and SCUSD contacted counsel for RCOE to find out if the holder of Student's educational rights had signed the IEP. The document that SCOE and SCUSD received in response only noted that RCOE mailed the IEP to the educational rights holder for signature. Accordingly, the evidence established that Student's last agreed-upon and implemented educational program was his November 14, 2011 IEP.

Student's Needs as of September 2012

7. When Student arrived at the Juvenile Hall school, SCPO provided SCOE with a packet of documents that included Student's prior IEP's and assessments. A review of these documents showed that Student had significant mental health, behavioral and social-emotional needs. RUSD had conducted the most recent assessment in November 2011, for his triennial reevaluation, and had conducted a functional behavioral assessment (FBA) in October 2011. At that time, Student resided in a group home.

8. The RUSD triennial assessment showed that on rating forms completed by Student and his teacher, Student had clinically significant ratings on the Behavior Assessment Scale for Children, Second Edition for depression, attention deficits, being overly sensitive to physical problems, problems at school, and internalizing problems. These deficits qualified Student for ED eligibility because Student exhibited them over a long time and to a marked degree and they prevented Student from accessing the curriculum without special education supports and services. The FBA documented Student's defiance to completing work, and how that prevented him from accessing his curriculum. His defiance

⁵ When Student attended RUSD, he had a surrogate parent making educational decisions. The record is not clear whether the surrogate parent or Father held Student's educational rights at the time of the August 2, 2012 IEP team meeting.

was caused in part by the death of his mother and his confinement in Riverside County Juvenile Hall for eight months. The FBA proposed replacement behaviors.

9. The documents from RUSD and RCOE also stated that Student's math, reading and writing skills were at the third to fourth grade level, even though he was in eighth grade. At the November 14, 2011 IEP team meeting, RUSD offered continued placement in a SDC for ED students, with an hour a day of counseling services, to meet Student's significant mental health, behavioral and social-emotional needs. Additionally, RUSD developed goals to address Student's significant academic deficits.

September 2012 through November 2012

Interim IEP Team Meeting

10. Student's interim IEP team meeting should have been held by October 4, 2012 as Student's first day of instruction was on or about September 5, 2012. However, SCOE had difficulty identifying and locating the holder of Student's educational rights. SCOE received a package of information from the SCPO, which included the November 2011 RUSD IEP and the August 2012 RCOE IEP. SCOE contacted RCOE and RUSD to find out who held Student's educational rights and to locate Father when it was determined Father held Student's educational rights. While Tracy Powers, SCOE program specialist, made numerous phone calls to phone numbers on RCOE and RUSD IEP's to locate Father, SCOE never contacted SCPO for that purposes.

11. In the third week of October, SCOE located Father and called him to set up an IEP team meeting in the next few days, which would not have met the 30-day requirement to hold an interim IEP team meeting. However during that phone call, Ms. Powers learned that Father was Spanish speaking and that it would be impossible to hold the IEP team meeting in the next few days because a Spanish interpreter was needed. Ms. Powers finally arranged the meeting for November 2, 2012.

12. Therefore, SCOE failed to hold a timely 30-day interim IEP team meeting after Student's transfer into the Juvenile Hall school. While SCOE had difficulty in determining who possessed Student's educational rights, Ms. Powers did not provide an adequate explanation why she did not contact SCPO for assistance, even though she acknowledged that SCPO would have the most up-to-date information on who possessed Student's educational rights. By November 2, 2012, Student had already been in the Juvenile Hall school for two months. SCOE's failure to timely hold an interim IEP team meeting significantly impeded Father's ability to participate in Student's educational decision-making process and denied Student an educational benefit due to the delay in reviewing his IEP. Therefore, SCOE denied Student a FAPE because of its failure to timely hold an interim IEP team meeting.

Provision of Comparable Educational Services

13. Juvenile Hall is divided into different housing units and students receive their education in SCOE classrooms within their assigned housing unit. Student was initially assigned to a housing unit that had a SDC and he attended that SDC for the entire school day. This SDC had a credentialed special education teacher, an instructional aide, and typically eight to ten students.

14. However, Student did not receive the counseling required by the November 14, 2011 IEP because SCOE believed that the August 2, 2012 IEP, which required no counseling, was Student's last agreed-upon and implemented IEP. Additionally, the SDC only addressed Student's academic needs and provided no support for his social-emotional or behavioral deficits. Student attended this SDC through October 25, 2012, when SCPO transferred him into the high impact unit (HIU), where he has resided throughout the hearing, for making threats against his SDC teacher and a fellow student. The HIU only had a general education class and Student received special education services through a resource teacher. Of the 10 students in the HIU, seven were special education students.

15. Before SCPO removed Student to the HIU, he received adequate academic instruction from Eziuche Okemiri, Ph.D., a credentialed special education teacher.⁶ While Student was in Dr. Okemiri's SDC, either Dr. Okemiri or the instructional aide provided Student with intensive academic instruction and Student made meaningful academic progress in math and language arts. Dr. Okemiri testified credibly about the progress Student made in that month and why he considered it meaningful. Student produced no evidence to the contrary.

16. During Student's one week in the HIU classroom before the November 2, 2012 IEP team meeting, his instructor was a general education teacher. According to Dr. Pierson, SCOE is not fiscally able to provide a special education teacher for the HIU classroom, despite the fact that 70 percent of its students require special education services. While Student's first teacher in the HIU did not testify, his next teacher in the HIU, Michael Lewis, provided useful information about the academic program.⁷ For academic instruction, SCOE teachers in the HIU use curriculum approved by the California

⁶ Dr. Okemiri has been a special education teacher at the Juvenile Hall school for five years and at a nearby school district for four years before that. Dr. Okemiri has a master's degree in special education and Ph.D. in education and organization.

⁷ Mr. Lewis became the HIU instructor in mid-November 2012, and has been the classroom teacher there, except for one month when he was on vacation from mid-December 2012 through mid-January 2013. Student's other HIU teachers did not testify, but SCOE did not introduce any evidence that Mr. Lewis' testimony was not representative of the HIU general education classroom.

Department of Education. That instruction is intensive, but it is general education academic instruction, not the special education instruction required by Student's IEP.

17. SCOE failed to adequately address Student's mental health, behavioral and social-emotion needs between the time Student started the Juvenile Hall school and the November 2, 2012 IEP team meeting. Student's November 14, 2011 IEP called for him to be in a SDC for ED students and to receive an hour a day of counseling to meet his mental health, behavioral and social-emotion needs according. This IEP also included a social-emotional goal for Student to respond appropriately to instruction and seek help when needed, instead of refusing to work because he did not understand the instruction.

18. SCOE had no plausible explanation why it believed that an unsigned IEP from RCOE was Student's last agreed upon and implemented IEP, when the November 14, 2011 RUSD IEP contained all the requisite signatures. Because the average stay of a Juvenile Hall ward is 16 days, SCOE believes its duty is merely to provide quick and intensive academic instruction and to attempt to implement a student's IEP as best as possible based on the limitations imposed by SCPO. From the testimony of Dr. Pierson, it was obvious that even if SCOE had realized that Student's last agreed-upon and implemented educational program was the November 14, 2011 IEP, SCOE would not have implemented that IEP through comparable services due to fiscal constraints and perceived limitations imposed by SCPO. SCOE would not have provided Student with the intensive mental health, behavioral and social-emotion services he would have obtained in a SDC for ED students through comparable means, such as a specially trained instructional aide or behaviorist to assist Student.

19. In this case, SCOE failed in its duty to determine which IEP was Student's last agreed-upon and implemented IEP by wrongly assuming that the unsigned August 2, 2012 RCOE IEP was that IEP. As a result, Student did not receive the intensive help that he needed to meet his mental health, behavioral and social-emotion needs.

November 2012 IEP Team Meeting

20. Student asserted that SCOE failed to develop an IEP that met his unique needs because it merely continued the prior academic goals and services, even though Student's academic skills were at a third to fourth grade level for several years. Additionally, SCOE failed to propose any goals or services, including a BSP, to meet his mental health, behavioral and social-emotional needs, despite having ample information about his significant deficits in these areas. SCOE asserted that it offered a comparable educational program as the August 2, 2012 RCOE IEP and that Student was making adequate educational progress so that no changes to the IEP were required. In other words, it continued to adhere to the wrong IEP.

21. SCOE offered at the November 2, 2012 IEP team meeting two reading comprehension and writing goals respectively, and a math goal. SCOE offered a SDC if SCPO released Student from the HIU so he could return to his prior housing unit. Otherwise,

Student would attend the general education class in the HIU and receive one hour a week of special education instruction by a resource specialist program (RSP) teacher. SCOE was to have its school psychologist evaluate Student to determine if he needed counseling services and/or a BSP.

Mental Health, Behavioral and Social-Emotional

22. A school district provides a FAPE to a student if its program or placement is designed to address the student's unique educational needs, and reasonably calculated to provide meaningful educational benefit in the least restrictive environment.

23. Even if the August 2, 2012 IEP had been Student's last agreed-upon and implemented IEP, SCOE needed to make changes to the IEP to meet Student's mental health, behavioral and social-emotional needs. The prior IEPs from RUSD and RCOE documented significant needs in these areas based on Student's episodes of defiance and his shutting down and refusing to do work, even though Student was typically respectful to his teachers and peers. This was confirmed by what Dr. Okemiri observed in the SDC. However, Student became increasingly defiant to Dr. Okemiri and even threatened to physically harm him, which he reported to SCPO and which led in part to Student's removal to HIU soon before the November 2, 2012 IEP team meeting.⁸

24. However, SCOE did not view Student's defiance as an educational issue. Instead, SCOE viewed Student's conduct as a problem for SCPO to handle, even though Student's conduct was consistent his conduct as reported in the RUSD FBA and November 14, 2011 IEP, which led to the placement in a SDC for ED students with intensive counseling support. SCOE provided no plausible explanation why it failed to notice the consistency in Student's behavior and did not offer goals or services to meet his mental health, behavioral and social-emotional needs.

25. Dr. Paula Solomon, Student's expert, Ms. Bryant, Dr. Pierson, Paul Jenkins, Psy.D., from the Sacramento Assessment and Treatment Center (SATC)⁹ and SCPO Senior Deputy Probation Officer Keith Linebaugh testified as to Student's needs and how those related more to the District's December 14, 2012 IEP. However, their general insights as to Student's needs is helpful in evaluating the November 2, 2012 IEP because Student's needs

⁸ Student attempted to demonstrate that his removal to the HIU violated his procedural rights because the change in placement was for school discipline or made without parental consent. However, the evidence established that the decision to move Student to the HIU was made solely by SCPO, and not SCOE.

⁹ SATC has a contract with the SCPO to conduct a multidisciplinary assessment for youth in the juvenile justice system to determine the services and placement the youth needs for primarily non-educational purposes. SATC completed such an assessment on Student on November 21, 2012.

were about the same. All but Dr. Pierson acknowledged that Student had significant mental health, behavioral and social-emotional needs based on information that existed as of the November 2, 2012 IEP team meeting. The information that these individuals, except for Dr. Pierson, presented established that as of November 2, 2012, Student needed goals and services to address his mental health, behavioral, and social-emotional needs.

26. The November 14, 2011 IEP stated that RUSD developed a BSP. However, the BSP was not attached to the copy of the IEP Student introduced at hearing, so no evidence exists as to what this BSP included. However, the fact that the BSP was missing does not excuse SCOE from the legal duty to notice that this IEP called for a BSP. SCOE then should have obtained that BSP or developed a new one.¹⁰ Student's need for a BSP was apparent as Student repeated the same negative conduct at Juvenile Hall regarding defiance to his teacher in completing class work that the RUSD FBA noted prevented him from accessing his curriculum a year before.

27. Insufficient information existed at the time of the November 2, 2012 IEP team meeting to warrant a residential placement.¹¹ At that time, the assessment information from RUSD and Palo Verde along with information from the recent RCOE and RUSD IEP's and Student's performance at Juvenile Hall did not indicate that Student needed a residential placement to make meaningful educational progress.

28. Therefore, while Student established that he required goals and services to address his mental health, behavioral and social emotional needs and that he needed a BSP, he did not prove that he required a residential placement. SCOE's failure to offer Student any goals or services to address these needs denied Student a FAPE.

Academic Needs

29. At the November 2, 2012 IEP team meeting, SCOE proposed increasing Student's instruction by a RSP teacher from 30 minutes a week to 60 minutes a week. SCOE offered Student placement in a SDC if SCPO released Student from the HIU. Unless, that happened, Student would receive his entire academic instruction in a general education class.

¹⁰ The August 2, 2012 RCOE IEP states that Student did not require a BSP, but provides no reasoning within the IEP document why Student no longer required a BSP. That IEP was not signed by Student's educational rights holder, indicating that he did not necessarily agree.

¹¹ Student attempted to demonstrate his need for a residential placement through a November 1, 2012 letter from Elvira Drljevic, M.D., a Child and Adolescent Psychiatrist at Juvenile Hall, which sets forth Student's long history of psychiatric symptoms. However, Student did not produce adequate evidence that SCOE knew of or received this letter before the November 2, 2012 IEP team meeting, or that this information was shared at the meeting.

30. The only direct evidence as any special education instruction Student received in the HIU classroom was from Mr. Lewis, who indicated that the RSP teacher is responsible for the special education instruction and reports on Student's progress. However, Student's RSP teacher did not testify as to the special education services provided, and SCOE did not explain how either 30 or 60 minutes a week at that time could equate to the SDC instruction that Student received in Dr. Okemiri's SDC.

31. Student's present levels of performance as of November 2, 2012, demonstrated that his reading and math skills were at the second to third grade level on the Measures of Academic Performance (MAP), as measured on September 10, 2012. Dr. Okemiri believed that Student's abilities were about a grade higher by the time Student was removed to the HIU, which is still significantly below Student's actual 10th grade level. Further, Student did not establish the academic instruction Dr. Okemiri and the instructional aide provided failed to allow him to make meaningful academic progress.

32. Student did not present any direct evidence that specifically discussed the academic goals proposed in the November 2, 2012 IEP and why these goals were not adequate to meet Student's academic needs. Dr. Solomon opined that, based on her review of the 1999 California Department of Education's, The California Reading Initiative and Special Education in California report (Reading Initiative), SCOE's reading program was inadequate and that Student required additional instruction to meet his unique needs. However, Dr. Solomon did not have any first-hand knowledge of the reading methodology SCOE employed and both Dr. Okemiri and Mr. Lewis were convincing that this reading program addressed Student's unique needs when he was emotionally available for instruction and that SCOE was implementing Student's last agreed-upon and implemented IEP.

33. Therefore, Student did not establish that the District's proposed academic goals were not adequate to meet his needs or that the District need should have offered a different reading program. What Student established is that, to access the curriculum, he needed a SDC to meet his mental health, behavior and social-emotional needs. SCOE's failure to provide these services led to defiant behaviors by Student in both the SDC and HIU general education class, as predicted by information from RUSD. These behaviors prevented Student from accessing the curriculum, and decreased the academic progress he otherwise was making.

ESY

34. A district must provide ESY services to a student in special education if required to prevent regression during the summer. Student's November 14, 2011 RUSD IEP provided for ESY due to the severity of Student's academic deficits and the risk of regression. SCOE's November 2, 2012 IEP did not offer ESY services, nor was there any discussion whether Student required ESY services. SCOE needed either to make an ESY offer or get consent to terminate ESY. SCOE's failure to either offer ESY or get consent to terminate denied Student a FAPE as the evidence established that he required ESY services to prevent regression because of the severity of his academic deficits.

ITP

35. A school district is required to develop an ITP for students who will turn 16 years old during the time addressed by the annual IEP. The ITP must be based on assessment information, a student's present levels of performance and information from the student about postsecondary interests. It must also address postsecondary goals and transition services. Student's 16th birthday occurred during the 12-month period following the November 2, 2012 IEP team meeting. Student contends that SCOE's ITP was not adequate in light of Student's significant academic, mental health, behavioral and social-emotional deficits. SCOE asserted that it properly developed Student's ITP based on his expressed wishes for what he wanted to do as an adult.

36. SCOE developed Student's ITP by speaking with him and obtaining information as to his postsecondary desires. Student's November 2, 2012 ITP stated that Student's post-secondary intention was to attend a community college and study culinary arts. While the resultant goal for Student to attend a community college to learn culinary skills is appropriate, the ITP lacked appropriate steps for Student to achieve this goal. The ITP failed to acknowledge that Student had academic skills at the third to fourth grade level, and mental health, behavior and social-emotional deficits that have led to acts of violence, which would make it difficult for him to succeed in a community college. The ITP should have acknowledged Student's academic deficits and addressed what he needed to do before he could enter a community college. The ITP placed all the responsibility on Student to explore the requirements to enter the community college with minimal assistance from SCOE, constituting 15 minutes a month career awareness instruction and 60 minutes a year of vocational counseling and guidance. Additionally, it was doubtful that Student could perform online career research while in the HIU.

37. Dr. Solomon provided convincing testimony as to the inadequacy of SCOE's proposed ITP. Dr. Solomon's employment involves working with children, like Student, who reside in a group home and who are in the juvenile justice system. Dr. Solomon established that the SCOE was simply merely writing down what Student stated what he wanted to do after completing high school with no real analysis of the feasibility of his desires. Therefore, the totality of the evidence established that the ITP was inadequate and denied Student a FAPE.

December 14, 2012 IEP Team Meeting

38. As with the November 2, 2012 IEP, Student asserted that SCOE's IEP offer failed to adequately address his academic, mental health, behavioral and social-emotional needs and that he required a residential placement to make meaningful educational progress. SCOE contended that SCPO, not SCOE, had the responsibility to make an offer of a residential placement, if needed, and that the December 14, 2012 IEP was adequate to meet Student's unique needs.

SATC Assessment

39. Dr. Jenkins conducted the psychological assessment for SATC. Dr. Jenkins has a doctorate in clinical psychology and has been a licensed psychologist for over 10 years, and has worked with SATC for 12 years. For the assessment, Dr. Jenkins reviewed Student's educational and mental health records, addressed the probability of recidivism and conducted an 80-minute interview of Student.

40. Dr. Jenkins' document review revealed that Student had twice run away ("eloped") from group homes. Further, a March 16, 2012 evaluation conducted in Riverside, diagnosed Student as having schizophrenia, paranoid type, and stated that Student had reported visual hallucinations and delusions that he could read minds and other people could read his mind. On July 12, 2012, the Riverside County Juvenile Court approved Student for residence in a level 13 or 14 group home¹² until Father established residency in Sacramento, at which time Student would be transferred to Sacramento County Juvenile Hall. Dr. Jenkins' assessment indicated that Student had a high risk of reoffending based on his impulsivity, anger, suspicion of others, and lack of understanding of the consequences of his actions. Dr. Jenkins, in conjunction with Dr. Alexandra Hazel,¹³ diagnosed Student with a psychotic disorder, not otherwise specified, conduct disorder and attention deficit hyperactivity disorder, and chemical dependency. Dr. Jenkins recommended a residential placement to work on Student's psychiatric impairment, and counseling for maladaptive coping skills that would focus on behavior modification and independent living skills, which Dr. Hazel concurred.

41. Mr. Linebaugh presented the SATC report to a multi-disciplinary group, which would make the treatment and placement recommendation for the Juvenile Court. The recommendation was for an in-state placement at a Level 13 or 14 group home, which Mr. Linebaugh reported to the IEP team on December 14, 2012. An important reason for the residential facility recommendation was that Father's home was not an acceptable residence due to Student's and Father's history of substance abuse, and a history of violence within the immediate and extended family. However, Mr. Linebaugh could not locate an acceptable contracted group home for Student, as each contacted facility rejected Student after reviewing his application packet. The report to the Juvenile Court made on February 14, 2013, recommended a residential placement in an out-of-state facility because of the

¹² Mr. Linebaugh explained that group homes in California are described by a level system based on the intensity of services provided, with Level 14 being the highest unlocked group home level of care.

¹³ Dr. Hazel, a licensed psychiatrist, conducted a psychiatric assessment on Student on November 12, 2012. Dr. Hazel did not testify, but her hearsay statements in her report are admissible because they corroborated direct evidence from witnesses, like Dr. Jenkins and Mr. Linebaugh, and are considered reliable. (Cal. Code Regs., tit. 5, § 3082, subd. (b).)

difficulty in locating an in-state facility that would admit Student. However, the recommendation was not based on Student's educational needs.

Assessment Request

42. A LEA must deliver an assessment plan to a parent within 15 days of the parent's assessment request. An IEP team meeting to review the assessment results must occur within 60 days of the receipt of parental consent for the assessment, not counting days between the student's school sessions and vacations in excess of five school days. Student contends that SCOE failed to timely present Father with an assessment plan after his request at the November 2, 2012 IEP team meeting, or at the latest in his November 21, 2012 written request. SCOE contends that it presented Father with an assessment plan within 15 days of his request, which it contends was not made until the December 14, 2012 IEP team meeting.

43. The November 2, 2012 IEP does not reflect that Father requested that SCOE assess Student, and Father did not present any evidence to the contrary. However, on November 21, 2012, Father responded to SCOE's November 2, 2012 IEP in writing that set forth his concerns about the IEP. Father requested in this document that SCOE conduct a mental health assessment. Dr. Pierson replied on November 25, 2012, stating that the SATC's assessment was pending and decisions whether Student required counseling and mental health services would be made at the December 14, 2012 IEP team meeting.

44. However, the assessment SATC completed and presented at the December 14, 2012 IEP was not a mental health assessment to determine educationally related services. The SATC assessment for Student included a psychological assessment, a psychiatric assessment, an evaluation of the family, a review of educational records, a probation officer report, and a recreational and occupational report. Typically, SATC assesses the youth in a group home associated with SATC's parent company, but could not do that with Student because of his volatile behavior. Thus, they assessed Student at Juvenile Hall, which hindered the assessment in trying to determine the appropriate treatment plan and placement for Student.

45. Mr. Linebaugh has been a probation officer for 26 years and heads the SCPO unit assigned to make in-state residential placement recommendations to the Juvenile Court after the completion of a SATC assessment. Mr. Linebaugh established that while a review of a youth's educational records is part of the SATC assessment, and that sometimes a psychoeducational evaluation by a qualified school psychologist is conducted, the SATC assessment is done for purposes involving the juvenile justice system, although it has some useful information in developing an educational program, but does not make an educationally related placement recommendation. Therefore, the SATC assessment was not the mental health assessment for educational purposes that Father requested, and thus SCOE should have presented him with an assessment plan by December 6, 2012, which it did not.

46. At the December 14, 2012, IEP team meeting, SCOE agreed to conduct a comprehensive assessment, which would include mental health, academic, health,

intellectual development, and social-emotional functioning. SCOE had prepared an assessment plan for Father to review and sign at the December 14, 2012 IEP team meeting. However, the presentation of the assessment plan to Father was delayed. SCUSD, whose representatives attended this IEP team meeting, wanted to participate in the assessment because Student would be SCUSD's educational responsibility once he left Juvenile Hall. SCUSD and SCOE agreed that SCUSD would conduct the intellectual development, social-emotional and mental health assessments while SCOE would conduct the academic and health components. SCOE presented the assessment plan to Father on January 11, 2013, and he signed it on January 17, 2013.

47. SCOE's presenting the assessment plan to Father on January 11, 2013, was timely as only 15 days had elapsed because the Juvenile Hall school was not in session from December 24 through January 1, 2012. This means that the 15 days, did not include the days from December 22, 2012, to January 2, 2013.

48. Therefore, SCOE untimely responded to Father's November 21, 2012 request for a mental health assessment, as it should have presented Father with a mental health assessment plan by December 6, 2012. As to the remainder of the assessments in the January 11, 2013 assessment plan, SCOE complied with assessment timelines, as the days of SCOE's Christmas break are not counted. SCOE's failure to present Father with a timely mental health assessment plan significantly impeded Father's ability to participate in Student's educational decision-making process because he lacked information he needed to participate intelligently in the December 14, 2012 IEP team meeting, and possibly denied Student an educational benefit depending on the results of the assessment.

Mental Health, Behavioral and Social-Emotional Goals and Services

49. The new information SCOE had for the December 14, 2012 IEP team meeting from the SATC assessment showed that Student had much more significant mental health problems than previously believed. At the time of the IEP team meeting, Student refused to sit in the same room with his classmates, and worked in an adjoining room where the HIU instructor could see Student. At the IEP team meeting, the school principal downplayed the significance of Student's conduct, stating that Student preferred to be in another room. SCOE's response was merely to state that the SCOE school psychologist would provide one hour a week of counseling, which was not documented in the IEP as a related service, and that the school psychologist would determine if Student required a BSP.

50. However, Mr. Lewis, who could not attend the IEP team meeting because he was on vacation, earlier asked Student why he wanted to be apart from the rest of the class. Student informed Mr. Lewis that he heard in his head the other students talking about him, which was not true. It has only been recently that Mr. Lewis was able to negotiate with Student to have him in the HIU classroom with the other students for the entire school day. However, Student still reported auditory hallucinations to Dr. Solomon right before the hearing. Additionally, Mr. Lewis stated that during the time he had instructed Student, Student has had two emotional crises, during which it was not possible to teach Student.

51. Ms. Bryant did not attend the IEP team meeting as a SCUSD supervisor, Cyndi Swindle, whom Ms. Bryant oversees, attended in that role. However, Ms. Bryant is familiar with Student's educational needs based on her conversations with Ms. Swindle and review of his educational records. Ms. Bryant has extensive experience in the special education field, including the development of IEP's. Ms. Bryant opined that the December 14, 2012 IEP needed to contain mental health, behavioral and social-emotional goals and services to meet Student's unique needs in these areas. SCOE did not challenge that opinion.

52. Further, the information presented at the December 14, 2012 IEP team meeting established Student's continued need for a BSP, which was needed to address why Student was not sitting in the HIU classroom. Additionally, Student still had episodes of defying his teachers, as he had at RUSD, especially when not interested in the area of instruction or when required to do difficult work.

53. Student established that the December 14, 2012 IEP failed to include the mental health, behavioral and social-emotional goals and services that he required to meet his unique needs, and that he required a BSP to address the maladaptive behaviors that prevented him from accessing his curriculum. Therefore, SCOE denied Student a FAPE because the IEP failed to address Student's unique mental health, behavioral or social-emotional needs.

Academic Needs

54. The new information presented at the December 14, 2012 IEP team meeting regarding academic needs was Student's language arts MAP score, which was at the third grade level. Student's fall grades were reported. In them, he received A's or B's in all his classes, except earth sciences, in which he received an F. However, those grades were based primarily on effort and work Student accomplished at his third grade performance level and not test scores. Student did complete his work, but did have times when he exhibited the defiant behavior noted in the November 2011 RUSD assessment when the classwork was too difficult or not interesting to him.

55. The December 14, 2012 IEP contained six academic goals to address reading comprehension, writing, and math. Student did not establish that these goals, or the academic material or instructional methods SCOE used in the HIU classroom were not adequate to meet Student's unique needs. In her testimony, Dr. Solomon testimony again opined that Student required an intensive three-hour a day reading program based on the Reading Initiative. However, she did not conduct any academic testing to support her conclusion, nor was her analysis of the information that existed at the time of the December 14, 2012 IEP team meeting convincing that Student required such a program. Further, Mr. Lewis' explanation of the reading program he used and Student's progress demonstrated its effectiveness.

56. However, SCOE failed to address Student's deficits related to his SLD. In the IEP Student only received one hour a week of RSP services, and the rest of his academic

instruction was in a general education class with no special education supports. Student established based on information in past assessments, IEP's, and classroom performance that he required academic instruction in a SDC, such as Dr. Okemiri's SDC, to meet his academic needs.

57. SCOE's defense of the academic shortcomings of the December 14, 2012 IEP was primarily that it cannot provide a SDC for Student while he is in the HIU. SCPO does not permit him to leave the HIU to attend a SDC in another unit, and for fiscal reasons SCOE cannot afford to establish a SDC in the HIU. However, SCOE failed to explain why it could not provide a jointly credentialed general education and special education HIU classroom instructor, a special education instructional assistant or more RSP services.

58. SCOE explained that its educational program is designed to meet the needs of students whose typical stay at Juvenile Hall is 16 days. However, SCOE knew from the information presented at the November 2, 2012 and December 14, 2012 IEP team meetings that Student was to be a long-term Juvenile Hall resident because of the difficulty in finding him a residential placement and his record running away from two group home placements in Riverside County.

59. Therefore, Student established that SCOE denied him a FAPE by failing to provide adequate special academic instruction to meet his unique needs related to his SLD. Student required a nearly full-time special education instruction to meet his academic, mental health, behavioral and social-emotion needs, to receive a FAPE. SCOE failed to provide this specialized instruction while Student resided in the HIU. Accordingly, SCOE's offer of December 14, 2012, was not reasonably calculated to permit Student to make meaningful educational progress.

ITP

60. In the December 14, 2012, IEP, SCOE made no changes to the November 2, 2012 ITP. Especially considering the new information presented at the December 14, 2012 IEP team meeting, SCOE's ITP for Student was not adequate, for the reasons set forth in Factual Findings 35, 36 and 37 above, and therefore denied Student a FAPE.

Need for Residential Placement

61. Student asserted that due to his significant academic, mental health, behavioral and social-emotional deficits, he required a placement in an out-of-state residential facility. Student requested placement at Devereaux-Texas because no in-state facility could meet his needs. SCOE contended that insufficient information existed at the December 14, 2012 IEP team meeting to determine whether Student required a residential placement for educational purposes, in or out of state.

62. Dr. Pierson stated that SCOE does not have the authority to make a residential placement in the IEP process because only an order from a juvenile court judge could release

Student from Juvenile Hall to a residential placement and at that time, Student would become the responsibility of SCUSD. However, Dr. Pierson could not explain why SCOE would not make a recommendation for a residential placement on an IEP if Student required such a placement, and then request that SCPO or Student's juvenile justice attorney present the recommendation to the juvenile court.

63. Dr. Solomon opined that, by the time of the December 14, 2012 IEP team meeting, Student required a placement in a residential treatment facility that could provide Student with intensive services to address his mental health, behavioral and social-emotional needs in a comprehensive therapeutic milieu, such a Devereaux-Texas. Dr. Solomon based her opinion on her education and experience in working in a group home treating children like Student, her review of Student's records, and a one hour interview with him.

64. While Dr. Solomon agreed with Student's diagnosis in the SATC assessment, that in itself did not warrant placement in an out-of-state residential treatment facility. SCOE does not dispute that Student requires a residential placement, but the parties dispute whether he requires such a placement for primarily educational purposes or because he cannot return to his Father's home due to a history of drug use and violence there.

65. As stated above in Factual Findings 43 through 48, SCOE was conducting a mental health assessment during the time of the hearing, and an IEP team meeting to discuss the results had not yet occurred. In the absence of that assessment, Student failed to establish that he needs a residential placement. The documents from RUSD and RCOE indicated that Student's residential placement was more a result of Student not being able to remain at home related to juvenile justice concerns to prevent recidivism, not educationally related reasons. The SATC assessment, especially Dr. Jenkins' assessment, and Mr. Linebaugh's opinion focused on Student's need for a residential placement because of the juvenile justice aspects of Student's mental health, behavioral and social-emotional deficits and the risk that he will reoffend if these deficits are not addressed.

66. Therefore, Student did not establish that he required an educationally related residential placement, in or out of state, to receive a FAPE. The SATC assessment information established Student's need for a residential placement to help avoid Student's reoffending, and acknowledged the reality that Student could not return to live with Father.

ESY and Providing Parent with Copy of IEP

67. SCOE should have had some discussion about whether to offer ESY services, as with the November 2, 2012 IEP. SCOE's failure to discuss or offer ESY services denied Student a FAPE because SCOE did not discuss why it was not offering ESY services at the IEP team meeting, despite Student having received this service previously.

68. Student did not provide any evidence that he did not receive a copy of the IEP, either in English or Spanish. Therefore, Student failed to establish that SCOE did not give him a copy of the December 14, 2012 IEP.

Educational Responsibility of SCUSD

69. SCUSD contends that it is not an appropriate party to this action because the responsibility to educate Student belonged to SCOE as long as he remains incarcerated in Juvenile Hall. Student contends that SCUSD was a responsible party during all times alleged in this matter because Father resided within the boundaries of SCUSD and SCUSD was at the time of the hearing assessing Student pursuant to a SCOE assessment plan. SCOE contends that SCUSD is an appropriate party because the responsibility for making a residential placement, if needed, falls upon SCUSD.

70. The evidence did not establish any educational responsibility in SCUSD concerning any of the issues for hearing, such as providing educational services. SCOE is responsible for Student's education as long as he remains in Juvenile Hall pursuant to Education Code section 48645.2. Additionally, while Student remains in Juvenile Hall, SCOE is responsible for making IEP offers, including a residential placement if needed by Student to make meaningful educational progress. (Legal Conclusion 30.)¹⁴

Remedies

71. ALJs have broad latitude to fashion equitable remedies appropriate for the denial of a FAPE. Appropriate equitable relief, including compensatory education, can be awarded in a decision following a due process hearing. The right to compensatory education does not automatically award day-for-day or session-for-session replacement for the opportunities missed. An award to compensate for past violations must rely on an individualized analysis, just as an IEP focuses on the individual student's needs. The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place, and may be reduced if parents have not cooperated with or obstructed the IEP process.

72. Student's last agreed-upon and implemented educational program was the November 14, 2011 RUSD IEP, which required an hour a day of counseling services and full-time placement in a SDC for ED students that SCOE has never provided. Therefore, Student is entitled to compensatory education for SCOE's failure to provide that counseling and placement in that SDC, or a comparable program, until another IEP was fashioned.

73. SCOE also failed to provide Student adequate academic support by a special educational paraprofessional or special education teacher in the HIU general education classroom. Therefore, Student is entitled for to receive compensatory academic instruction in the form of one-to-one instruction.

¹⁴ Nothing in this Decision addresses whether SCUSD may be a responsible educational agency regarding the assessments discussed above in Factual Findings 43 through 48.

74. Finally, as Student requires a BSP, SCOE needs to develop a BSP, if one has not already been created, for Student that addresses at a minimum his problem of classroom defiance, threatening of peers and academic personnel, and withdrawing from the classroom to a separate room. Because Student requires mental health, behavior and social-emotional goals, SCOE needs to develop these goals.

75. SCOE has demonstrated such difficulty in developing an appropriate ITP that employment of an outside person is required to develop an appropriate ITP for Student. That ITP must take into consideration Student's post-secondary interests and the supports and services he realistically needs to work towards the ITP goals.

LEGAL CONCLUSIONS

Burden of Proof

1. Student, as the party requesting relief, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

Elements of a FAPE

2. Under the Individuals with Disabilities Education Act (IDEA) and California law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

3. In *Board of Educ. v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Id.* at p. 198.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950-953.) The Ninth Circuit has referred to the educational benefit standard as "meaningful educational benefit." (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2007) 541 F.3d 1202, 1212-1213; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.2d 1141, 1149. (*Adams*).)

4. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is

evaluated in light of the information available at the time it was implemented. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams, supra*, 195 F.3d at p. 1149.) To determine whether a school district offered a pupil a FAPE, the focus is on the appropriateness of the placement offered by the school district, and not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

5. An IEP must contain a statement of measurable annual goals related to “meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum” and “meeting each of the child’s other educational needs that result from the child’s disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child’s goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

6. The methodology to be used to implement an IEP is left to the school district’s discretion so long as it meets a student’s needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, 458 U.S. at p. 208; *Adams, supra*, 195 F.3d at p. 1149; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32)

7. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, at pp. 205-06.) However, a procedural error does not automatically require a finding that a FAPE was denied. Since July 1, 2005, the IDEA has codified the pre-existing rule that a procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Juvenile Hall Education Responsibility and Duties

8. Children placed in a juvenile hall are entitled to a FAPE. (Ed. Code, § 56150.) Juvenile court schools provide educational services to all students “detained” in juvenile halls. (Ed. Code, § 48645.1) Regardless of the residence of the parents or legal guardians of such children, the responsibility for providing a FAPE to any student who is detained in juvenile hall rests with the local county board of education. Education Code, section 48645.2 provides that county board of education shall operate juvenile court schools, or contract out their operation with the respective elementary, high school, or unified school district in which the juvenile court school is located.

Interim IEP Requirements

9. Title 20 U.S.C., section 1414, subdivision (d)(2)(C)(i)(I), provides:

In the case of a child with a disability who transfers school districts *within the same academic year*, who enrolls in a new school, and who had an IEP that was in effect in the same state, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law. (Italics added.)

Code of Federal Regulations, title 34, part 300.323(e) (2006), which implements the requirements of section 1414, subdivision (d)(2)(C)(i)(I), applies to transfer pupils “who had an IEP that was in effect in a previous public agency in the same State” and who transfer to a new school district in the same state “within the same school year.”

10. Education Code section 56325, subdivision (a)(1) sets forth similar requirements for the transfer of a special education pupil with an IEP from one California SELPA to another in a different SELPA within the same academic year. During the first 30 days, the transferring pupil is in the transferee district, that district must provide the pupil a FAPE, including services “comparable” to those described in his previously approved IEP. Within those 30 days, the transferee district must adopt the previously approved IEP, or develop, adopt, and implement a new IEP that is consistent with federal and state law.

IEP Implementation

11. A school district violates the IDEA if it materially fails to implement a child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815.) For example, a brief gap in the delivery of services may not be a material failure. (*Sarah Z. v. Menlo Park City School Dist.* (N.D.Cal. May 30, 2007, No. C 06-4098 PJH) 2007 WL 1574569, p. 7.)

Behavior Needs

12. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, “the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324; Ed. Code, § 56341.1, subd. (b)(1).) As noted by the comments to the 2006 federal implementing regulations, “[D]ecisions [as to the interventions, supports, and strategies to be implemented] should be made on an individual basis by the child’s IEP team.” (64 Fed.Reg. 12620 (2006).) California law defines behavioral interventions as the “systematic implementation of procedures that result in

lasting positive changes in the individual's behavior," including the "design, implementation, and evaluation of individual or group instructional and environmental modifications . . . designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual's right to placement in the least restrictive environment as outlined in the individual's IEP." (Cal. Code Regs., tit. 5, § 3001, subd. (d).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

Obligation to Provide Mental Health Services

13. Mental health services related to a pupil's education are statutorily to be provided by the student's responsible LEA. (Gov. Code §7570, et seq.) A pupil who was determined to be an individual with exceptional needs and was suspected of needing mental health services to benefit from his or her education, is to be assessed by the student's responsible LEA. (See Gov. Code § 7573.) LEA's have the full responsibility to provide mental health care services that are required to provide a FAPE in a child's IEP, and for a student in juvenile hall the obligation rests upon the county office of education. (*Student v. Los Angeles County Office of Education* (April 30, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2011090350, pp. 34-35.)

Issue 1a: During SY 2012-2013, did SCUSD and SCOE deny Student a FAPE by failing to provide adequate, measurable goals in all areas of need?¹⁵

14. Pursuant to Factual Findings 7 through 9, 22 through 33, 39 through 41 and 49 through 59 and Legal Conclusions 1 through 13, Student required goals in the areas of social-emotional, behavior and mental health to receive a FAPE due to his deficits in these areas. Student's need for goals in these areas was established by the November 2011 RUSD assessment and IEP, his conduct and behavior while in Juvenile Hall and the SATC report. In addition, Ms. Bryant, Dr. Jenkins and Dr. Solomon testified persuasively as to Student's deficits in these areas and his need for IEP goals to address them. Student did not present sufficient evidence that he required additional goals to address his reading, writing and math deficits, Dr. Okemiri, who was more convincing than Dr. Solomon, established that Student did not require additional goals for his writing, reading and math deficits. Therefore, SCOE'S failure to provide Student with any social-emotional, behavior or mental health goals (but not academic goals) denied Student a FAPE.

Need for Residential Placement

15. Under the IDEA, a child's unique educational needs include the child's academic, social, health, emotional, communicative, physical and vocational needs, but do

¹⁵ Pursuant to Factual Findings 69 and 70 and Legal Conclusion 30, SCUSD is not responsible for any of the alleged denial of FAPE in Issues 1a through 1e because it was not a responsible educational agency.

not include medical needs. In *Clovis Unified School Dist. v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635 (*Clovis*), the parties agreed that the student needed a residential placement, but disputed whether the hospital constituted either “related services” or a “residential placement” meant educationally necessary. The Ninth Circuit held that Clovis was not responsible for the costs of the hospitalization. The court identified three possible tests for determining when a school district is responsible for the cost of a residential placement: (1) when the placement is “supportive” of the child’s education; (2) when medical, social or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement primarily aids the student to benefit from special education. The Ninth Circuit determined that the student’s psychiatric hospitalization was for medical rather than for educational reasons and therefore did not satisfy any of the three enumerated standards.

16. The Ninth Circuit decided two cases in 2009 addressing residential placements. The student in the first case, *Ashland School Dist. v. Parents of Student E. H.* (9th Cir. 2009) 587 F. 3d 1175 (*Ashland v. E.H.*), had suffered from emotional problems and migraine headaches that led to suicide attempts and hospitalizations. The parents privately placed Student at a residential treatment facility without giving appropriate notice to the school district. The hearing officer found that the district had not offered the student a FAPE and ordered that the parents’ private placement be reimbursed partially, discounting the amount due to the parents’ failure to notify the district of the placement. The District Court reversed on several grounds, including that the student’s educational and medical issues were not intertwined and that the parents had placed the student at the residential placement primarily for medical reasons. The Ninth Circuit affirmed, finding that the evidence supported the District Court’s findings that the parents had placed the student at the residential placement based on problems at home rather than at school.

17. The student in *Ashland School Dist. v. Parents of Student R.J.* (9th Cir. 2009) 588 F.3d 1004 (*Ashland v. Student R.J.*), had different issues. Although she had Attention Deficit Hyperactivity Disorder, which caused her to have difficulty completing homework, her primary problems occurred outside of home or school. The IEP noted that the student was performing well at school. The District Court denied reimbursement for a unilateral residential placement as the student’s problems occurred outside of the school setting and were independent of the educational process. Citing to *Clovis*, the Ninth Circuit upheld the District Court’s ruling as a residential placement was not necessary to meet the student’s educational needs; her risky behaviors occurred outside of the school setting.

Issue 1b: During SY 2012-2013, did SCUSD and SCOE deny Student a FAPE by failing to offer Student an educational placement that met his unique needs?

18. Pursuant to Factual Findings 13 through 19, 39 through 41 and 61 through 66 and Legal Conclusions 1 through 13, 15 through 17, Student failed to establish, as of the IEP team meetings on November 2, 2012 and December 14, 2012, that he required an out-of-state residential placement for educationally related reasons. While the SATC assessment report recommended a residential placement for Student due to his mental health needs, the primary

reason for the recommendation was because Student could not reside with his family. The family home was not a suitable home for him due to a history of violence and criminality. SATC was also concerned that Student would reoffend without proper treatment. While SCPO had failed to find an in-state group home to accept him, that failure does not automatically necessitate a finding that Student requires an out-of-state placement because SCPO's search was limited to group homes with which it had an existing contract. Although SCOE needlessly delayed conducting a mental health assessment, as set forth below in Legal Conclusion 28, Student failed to produce sufficient evidence that he required an out-of-state residential placement for primarily educationally related reasons. Dr. Solomon was not convincing in relying on the SATC report to opine that Student required an out-of-state residential placement for primarily educationally reasons, since the SATC report expressed no such opinion and since some of Student's mental health problems were caused just by being in Juvenile Hall. Ms. Bryant was more credible than Dr. Solomon in her opinion, based on her knowledge of group homes and non-public schools in the Sacramento areas, that Student did not require an out-of-state residential placement.

19. However, as a transferring student, Student was entitled to placement in a SDC for ED students while at Juvenile Hall, or to comparable services, even if SCOE could not provide such services due to restrictions imposed by SCPO. Student established that his last agreed-upon and implemented educational program was the November 14, 2011 RUSD IEP, which provided for a full day placement in a SDC for ED students. The August 2, 2012 RCOE IEP, which did not provide for such a SDC, was never consented to by the Student's surrogate parent or Father, as no signed August 2, 2012 IEP was produced at hearing. Additionally, Student presented sufficient evidence through the SATC report, Ms. Bryant, Dr. Jenkins and Dr. Solomon that Student required placement in a SDC to meet his unique needs. SCOE's failure to provide the supports a SDC can provide led in part to the behavioral problems that caused Student to be removed to the HIU. Additionally, at its team meetings in November and December 2012, SCOE knew that Student, while in the general education class in the HIU, began to hear the voices of the other students in his head and for several months could only be educated in a room separate from his HIU classmates. Therefore, Student established that SCOE failed to offer Student an appropriate educational placement because it made no attempt to provide additional supports in Dr. Okemiri's SDC, and except for RSP support of an hour a week, did nothing to provide any additional support in the HIU classroom to address Student's academic, social-emotional, behavior and mental health needs. These failures denied Student a FAPE.

Issue 1c: During SY 2012-2013, did SCUSD and SCOE deny Student a FAPE by failing to offer Student adequate mental health services?

20. Pursuant to Factual Findings 7 through 9, 13 through 19, 23 through 28, 39 through 41 and 49 through 53 and Legal Conclusions 1 through 13, SCOE failed to provide Student with adequate mental health services. As stated in Legal Conclusion 19, Student's last agreed upon and implemented educational program was the November 14, 2011 RUSD IEP, which provided Student with an hour a day of mental health services. SCOE was required to provide a comparable mental health service to Student, which it never attempted

based on its mistaken belief that the August 2, 2012 RCOE was Student's last agreed-upon and implemented educational program. Further, while SCOE discussed providing Student with an hour a week of counseling services by the school psychologist, SCOE never made a formal offer of this mental health service in either the November or December 2012 IEP's. RUSD's November 2011 assessment, the SATC assessment, and the testimony of Dr. Jenkins, Ms. Bryant and Dr. Solomon established that Student needed additional mental health services to access the curriculum. Student's failure to receive adequate mental health services from SCOE in part caused his behavior to deteriorate and led to his HIU placement, and his subsequent mental health difficulties there. Therefore, Student established that SCOE denied him a FAPE by failing to offer adequate mental health services.

Issue 1d: During SY 2012-2013, did SCUSD and SCOE deny Student a FAPE by failing to develop a BSP?

21. Pursuant to Factual Findings 7 through 9, 13 through 19, 23 through 28, 39 through 41 and 49 through 53 and Legal Conclusions 1 through 13, Student had significant behavioral deficits and had a BSP when he attend a RUSD school. SCOE knew that the RUSD FBA found that Student needed a BSP to access his curriculum due to his behavior problems, especially his defiance towards his teachers. Not surprisingly, while Student originally behaved mostly appropriately in Dr. Okemiri's SDC, he began to exhibit the behavioral problems previously noted by RUSD; he became defiant and threatening to Dr. Okemiri, and hit a classmate. Student's conduct, which was predictable in light of the RUSD FBA, eventually caused SCPO to transfer him to the HIU. Additionally, the November 14, 2011 RUSD IEP contained a BSP, and as a transfer student he was entitled to implementation of that BSP by SCOE, or at least to comparable services. Despite Student's lengthy history of behavior problems, SCOE failed to implement the November 14, 2011 BSP, failed to provide comparable services, and failed to develop a new BSP when Student demonstrated the same behavioral problems. Therefore, Student established that SCOE denied him a FAPE by failing to develop a BSP for him.

Transition Services

22. "Transition services" means "a coordinated set of activities for an individual with exceptional needs" that: (1) is designed within a results-oriented process that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to post-school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation; (2) is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) Transition services may consist of specially designed instruction or a designated instruction and service. (34 C.F.R. § 300.43(b); Ed. Code, § 56345.1, subd. (b).)

Issue 1e: During SY 2012-2013, did SCUSD and SCOE deny Student a FAPE by failing to develop an adequate transition plan?

23. Pursuant to Factual Findings 35 through 37 and Legal Conclusions 1 through 13 and 22, Student established that SCOE failed to develop an adequate ITP for Student. SCOE merely placed on the ITP Student's post-secondary desire to attend a community college to learn culinary skills and to work in a restaurant. SCOE failed to consider whether Student's post-secondary goals were reasonable in light of his significant academic, social-emotional, behavior and mental health deficits, or whether goals in these areas were necessary for Student to achieve his post-secondary goals. The evidence established that SCOE provided only a pro forma ITP because it expects students to remain in Juvenile Hall for the average stay of 16 days, despite its knowledge that Student might remain longer due to his history and the difficulty of finding him a residential placement. Therefore, Student established that SCOE denied him a FAPE because it developed an inadequate ITP.

ESY

24. California Code of Regulations, Title 5, section 3043, provides that ESY services shall be provided for each individual with unique and exceptional needs who requires special education and related services in excess of the regular academic year. Pupils to whom ESY services must be offered under section 3043

. . . . shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition."

(See also 34. C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3); *Hellgate*, *supra*, 541 F.3d. at pp. 1210-1211.)

Issue 1f: During SY 2012-2013, did SCUSD and SCOE deny Student a FAPE by failing to make an offer of ESY services?

25. Pursuant to Factual Findings 34 and 67 and Legal Conclusions 1 through 13 and 24, Student established that SCOE committed a procedural violation that denied him a FAPE by not offering ESY services in either the November or December IEP. While the November 2011 RUSD IEP provided Student with ESY services, and SCOE should have discussed at either IEP team meeting Student's need for ESY services, or why Student might not be eligible for ESY services. While Student has not yet lost an educational benefit because 2013 ESY is several months away, Father's ability to meaningfully participate in Student's educational decision-making was significantly impeded, which denied Student a FAPE.

Issue 2a: During SY 2012-2013, did SCOE violate Parent's and Student's procedural rights, which prevented Parent from meaningfully participating in Student's educational decision-making process and denied Student an educational benefit, which denied him a FAPE, by failing to hold a timely IEP meeting?

26. Pursuant to Factual Findings 10 through 12 and Legal Conclusions 1 through 13, SCOE was required to hold a 30-day interim IEP by October 5, 2012, as Student first attended the Juvenile Hall school on September 5, 2012. SCOE's reason for not holding an IEP team meeting until November 2, 2012, that it could not locate the holder of educational rights, did not relieve it of that duty.. SCOE could not explain why it did not contact SCPO to find out how to contact Father, instead of contacting RCOE and RUSD. Because SCPO provided SCOE with copies of Student's educational records upon his entry to the Juvenile Hall school, it is hard to understand why Ms. Powers did not contact SCPO for the information as to the location of Father. SCOE's failure to hold a timely 30-day interim IEP team meeting significantly impeded Father's participation in the educational decision-making process for his son. Additionally, the delay denied Student an educational benefit because SCOE delayed in determining whether any changes were needed, and as shown above, important changes were needed. Therefore, the District denied Student a FAPE by failing to hold a timely 30-day interim IEP team meeting.

Assessment Plans

27. The district must deliver an assessment plan to a parent within 15 days of an assessment request. An IEP meeting to review the assessment results must occur within 60 days of the receipt of parental consent for the assessment, not counting days between the student's school sessions and vacations in excess of five school days. (Ed. Code, § 56321, subd. (a).)

Issue 2b: During SY 2012-2013, did SCOE violate Parent's and Student's procedural rights, which prevented Parent from meaningfully participating in Student's educational decision-making process and denied Student an educational benefit, which denied him a FAPE, by failing to provide an assessment plan within 15 days of parent request?

28. Pursuant to Factual Findings 42 through 48 and Legal Conclusions 1 through 13 and 27, the District was required to present Father with a mental health assessment within 15 days of his November 21, 2012, request, which was December 6, 2012. While Student contended that Father requested a mental health assessment at the November 2, 2012 IEP team meeting, the evidence established that SCOE first received the request on November 21, 2012, in a letter from Student's counsel. The fact that SATC was in a midst of its assessment did not relieve SCOE from its obligation to timely respond to Father's assessment request. The November 21, 2012 request was only for a mental health assessment. Father first made request for a comprehensive assessment at the December 14, 2012 IEP team meeting. SCOE timely presented Father with an assessment plan on January 11, 2013. Therefore, Student established that SCOE failed to present Father with a timely mental health assessment plan after his November 21, 2012 request, but failed to

prove that SCOE did not timely present a plan for a comprehensive assessment in response to Father's request at the December 14, 2012 IEP team meeting.

Issue 2c: During SY 2012-2013, did SCOE violate Parent's and Student's procedural rights, which prevented Parent from meaningfully participating in Student's educational decision-making process and denied Student an educational benefit, which denied him a FAPE, by failing to provide Parent with a copy of the December 14, 2012 IEP?

29. Pursuant to Factual Finding 68 and Legal Conclusions 1 through 13, Student did not establish that SCOE failed to provide Father a copy of the December 14, 2012 IEP. Father did not testify that he did not receive a copy of this IEP.

Issue 3: During SY 2012-2013, did SCUSD violate Parent's and Student's procedural rights, which prevented Parent from meaningfully participating in Student's educational decision-making process and denied Student an educational benefit, which denied him a FAPE, by failing to:

- a) Attend Student's IEP team meeting; and
- b) Make an offer of FAPE?

30. Pursuant to Factual Findings 69 and 70 and Legal Conclusions 1 through 13, SCUSD was not legally required to attend Student's IEP team meetings or make an offer of FAPE because SCOE was the legally responsible educational agency. Therefore, Student did not establish that SCUSD committed a procedural violation that denied Student a FAPE.

Relief

31. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).

32. Appropriate equitable relief, including compensatory education, can be awarded in a decision following a due process hearing. (*Burlington, supra*, 471 U.S. at p. 374; *Puyallup, supra*, 31 F.3d at p. 1496.) The right to compensatory education does not create an obligation to automatically provide day-for-day or session-for-session replacement for the opportunities missed. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033 (citing *Puyallup, supra*, 31 F.3d at p. 1496).) An award to compensate for past violations must rely on an individualized analysis, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

33. Welfare and Institutions Code section 727, subdivision (b), provides that a juvenile court has the authority to facilitate coordination and cooperation among agencies, and join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to ensure the delivery and coordination of legally mandated services. The juvenile court shall not impose duties upon the agency beyond those mandated by law. The juvenile court cannot order services unless it has been determined through the administrative process of a joined agency that the child is eligible for those services.¹⁶

34. Pursuant to Factual Findings 71 through 75 and Legal Conclusions 14, 19 through 21, 23, 25, 26, 28, and 31 through 33, Student is entitled to relief for SCOE's denial of FAPE. Therefore, if Student is not presently receiving individual counseling or placement in a SDC for ED students at the issuance of the decision and Student remains in at Juvenile Hall, SCOE shall provide Student with an hour every school day of counseling by either a credentialed school psychologist or licensed psychologist. In addition, as compensatory education, SCOE shall provide 100 hours of counseling

35. Student has not been receiving adequate academic support by a special educational paraprofessional or special education teacher since he left Dr. Okemiri's SDC. Therefore, if Student is at Juvenile Hall at the issuance of this decision, SCOE shall provide Student with all of his instruction in writing, reading and math by a credentialed special education or RSP teacher, plus academic support by a special educational paraprofessional. Additionally as compensatory education, SCOE shall provide him with 120 hours of individual academic tutoring.

36. As Student requires a BSP, SCOE is directed, within 30 days from the issuance of this decision, to convene an IEP meeting to develop a BSP, if one has not already been created, for Student that addresses, at a minimum, his problems of classroom defiance, threatening peers and academic personnel, and withdrawing to a separate room for instruction. Because Student requires mental health, behavior and social-emotional goals, if SCOE has not already proposed goals in these areas based on the recent assessments, SCOE shall also develop and propose goals at that meeting that address at a minimum, those same problems.

37. Finally, SCOE shall convene an IEP team meeting within 30 days of the issuance of this decision to make an offer of placement that would provide Student with a FAPE in the least restrictive environment and ESY services. Additionally, SCOE shall petition the juvenile court that has jurisdiction over Student pursuant to Welfare and Institutions Code, section 727, subdivision (b)(2), to determine Student's placement and the

¹⁶ See also California Rules of Court, rule 5.651, as to the role of the juvenile court in ensuring that a child over which it has jurisdiction receives a FAPE, and the responsibilities of the various public agencies.

responsibility of appropriate agencies to implement it so that Student need not needless remain in Juvenile Hall.

ORDER

1. If Student is not present receiving individual counseling or placement in a SDC for ED students at the issuance of the decision and he remains at Juvenile Hall, SCOE shall provide Student with an hour a school day counseling by either a credentialed school psychologist or licensed psychologist as a related service. In addition as compensatory education, SCOE shall provide 100 hours of counseling by either a credentialed school psychologist or licensed psychologist, or pay for when Student is released from Juvenile Hall, within two years of the issuance of this decision, less any compensatory education provided in Juvenile Hall. If Student has been placed outside of Juvenile Hall as of the issuance of this issuance, SCOE shall pay for 100 hours of individualized counseling as compensatory education to be provided by a credentialed school psychologist or licensed psychologist to be used within two years of the issuance of this decision at Student's or his educational representatives discretion.

2. As to academics, if Student is at Juvenile Hall at the issuance of this decision, SCOE shall provide Student with classroom instruction in writing, reading and math from a credentialed special education teacher. Additionally as compensatory education, SCOE shall provide him with 120 hours of individual academic tutoring from a credentialed special education teacher, or pay for when Student is released from Juvenile Hall, within two years of the issuance of this decision, less any compensatory education provided in Juvenile Hall. If Student has been placed outside of Juvenile Hall as of the issuance of this issuance, SCOE shall, as compensatory education, pay for 120 hours of academic tutoring from a non-public agency to be used within two years of the issuance of this decision at Student's or his educational representative's discretion.

3. If SCOE has not already proposed a BSP based on the recent assessments and Student is still present in Juvenile Hall, SCOE shall develop a BSP for Student that addresses, at a minimum, his issues of classroom defiance, threatening interaction with peers and academic personnel, and being instructed in the classroom and not a separate room, within 30 days from the issuance of this decision and to convene an IEP team meeting to discuss.

4. If SCOE has not already proposed mental health, behavior and social-emotional goals based on the recent assessments and Student is still present in Juvenile Hall, SCOE shall develop and propose goals that address at a minimum his issues of classroom defiance, threatening interaction with peers and academic personnel, and being instructed in the classroom and not a separate room, at an IEP team meeting within 30 days of this decision.

5. If Student is still present in Juvenile Hall, SCOE shall convene an IEP team meeting within 30 days of the issuance of this decision to make an offer of placement that would provide Student with a FAPE in the least restrictive environment and ESY services. SCOE shall consider a full continuum of placement options, including, but not limited to in-state and out-of-state residential facilities. Within 10 days of the IEP meeting above, SCOE shall petition the juvenile court that has jurisdiction over Student pursuant to Welfare and Institutions Code, section 727, subdivision (b)(2), and include a copy of this decision and SCOE's IEP placement offer for the juvenile court to consider in determining Student's placement and responsibility to implement.

6. Within 10 days of the issuance of this decision, Student shall file a copy of this decision with the Juvenile Court having jurisdiction over him.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed fully on Issues 1a, 1c, 1d, 1e, 1f and 2a and 2b and partially on Issue 1b. SCOE prevailed fully on Issues 2c and partially on Issue 1b. SCUSD prevailed fully on Issues 1a, 1b, 1c, 1d, 1e and 1f and 3a and 3b.

RIGHT TO APPEAL THIS DECISION

This is a final administrative Decision, and all parties are bound by this Decision. The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505, subd. (k).)

Dated: April 18, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings