

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019120387

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PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT.

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DECISION

MAY 8, 2020

On December 10, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming the Paso Robles Joint Unified School District as respondent. On January 6, 2020, Student amended her complaint. Administrative Law Judge Charles Marson heard this matter in Paso Robles on March 10, 11 and 12, 2020.

Daniel R. Shaw, Attorney at Law, represented Student. Student's Mother attended all hearing days on Student's behalf. Shauna Cunningham, Attorney at Law, represented the Paso Robles Joint Unified School District. Special Education Director

Terri Hollen attended all hearing days on Paso Robles's behalf, assisted on two days by Program Specialist Anusheh Agha.

At the parties' request the matter was continued to April 1, 2020, for written closing briefs. The record was closed and the matter was submitted on April 1, 2020.

## ISSUES

1. Did Paso Robles deny Student a free appropriate public education, called a FAPE, in the 2018-2019 school year, including extended school year, by failing to conduct a behavior assessment and a mental health assessment?
2. Did Paso Robles deny Student a FAPE in the 2019-2020 school year, until December 30, 2019, by:
  - a. failing to offer an appropriate residential placement;
  - b. failing to offer adequate mental health supports, including social work services;
  - c. failing to offer adequate behavior supports;
  - d. failing to timely conduct Student's annual individualized education program or IEP team meeting; and
  - e. failing to offer goals in all areas of need; specifically reading decoding, reading fluency, reading comprehension, math, written expression and mental health?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, & 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter Student requested the due process hearing and had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 19 years old and past the 12th grade at the time of hearing. She resided within Paso Robles's geographic boundaries at all relevant times. She was eligible for special education in the category of intellectual disability.

ISSUES 2.A., B. AND C.: DID PASO ROBLES DENY STUDENT A FAPE IN THE 2019-2020 SCHOOL YEAR, UNTIL DECEMBER 30, 2019, BY FAILING TO OFFER HER AN APPROPRIATE RESIDENTIAL PLACEMENT AND ADEQUATE MENTAL HEALTH AND BEHAVIORAL SUPPORT?

Paso Robles's changed Student's placement in September 2019 from a residential treatment center in Utah to an adult transition program in the District. Student contends this decision was not reasonably calculated to allow her to obtain educational benefit in light of her circumstances and, therefore, denied her a FAPE. She asserts that the Adult Transition Program in which she was placed could not effectively address her behavioral and mental health challenges. She argues that she still required a program that provided mental and behavioral support around the clock. Student asserts this was needed to control her self-injurious behaviors and inappropriate physical contacts with peers. Student also contends such a program was essential to her physical safety and education.

Paso Robles contends that its September 2019 change of Student's placement was reasonably calculated to allow her to obtain educational benefit. It asserts that she had succeeded in her residential placement, and no longer needed around-the-clock professional supervision or to live away from home. Paso Robles contends that the IEP that moved her to the Adult Transition Program provided sufficient behavioral and mental health supports to allow her to succeed in her education. It also argues that the residential treatment center was overly restrictive and that the Adult Transition Program was her least restrictive environment.

A FAPE means special education and related services that are available to an eligible child, that meet state educational standards, and are provided at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), 56363, subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2006) & 300.501 (2006).)

In general, a student eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the student's circumstances. (*Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034, 73 L.Ed.2d 690]; *Andrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000; 197 L.Ed.2d 335].)

An eligible student must also be provided sufficient related services, supplementary aides and services, program modifications and supports to allow the student to advance toward her goals, access and make progress in the curriculum, participate in activities, and be educated with other disabled and nondisabled students. (20 U.S.C. 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56345, subd. (a)(4).)

## STUDENT'S TRANSFER TO RESIDENTIAL TREATMENT

PASO ROBLES HIGH SCHOOL, MARCH 2017

Student's readiness to leave her residential treatment program in Utah in favor of a vocational program in the District must be considered in light of the reasons she was originally sent to residential treatment. Student was mildly intellectually disabled and had a full scale intelligence quotient of about 65. Until age 16, Student had been taught

in a mild to moderate special day class at a District school. In the 10th grade, however, a series of traumatic events destabilized her. One of her middle school friends hung herself. Then Student was raped by two different men on separate occasions, and one of them was convicted of the offense and sent to prison. Student began to abuse alcohol and other drugs, engaged in reckless personal and sexual behavior, and ran away, or eloped, both from school and home. She was defiant and oppositional in both places, refused to obey Mother's instructions, and was occasionally violent at home. She began a relationship with the man convicted of raping her. She set her family's house on fire twice. The counseling Paso Robles could provide did not substantially affect her mental, emotional or behavioral decline. She began to cut herself frequently to reduce stress, and to touch peers in a sexual manner as the result of her trauma and because she could not understand or comply with the social boundaries that restrain such conduct. She was essentially beyond the control of Parents and Paso Robles.

#### CINNAMON HILLS YOUTH CRISIS CENTER

Parents and Paso Robles therefore agreed to place Student in the Cinnamon Hills Youth Crisis Center in St. George, Utah, starting in March 2017. Psychiatric staff there diagnosed her as having mild to moderate intellectual disability, trauma and stress disorder, depressive disorder, child sexual abuse victimization, disruptive impulse-control and conduct disorder, and cannabis and tobacco use disorders. While at Cinnamon Hills, Student continued to injure herself by cutting about once a month and made little progress on her inability to observe physical boundaries with her peers. Her discharge summary in March 2018 reported that she showed "very little indication . . . that she is interested in committing herself to the hard work necessary for personal growth and change."

## LOGAN RIVER ACADEMY

In March 2018, Parents and Paso Robles agreed upon an IEP that moved Student to the Logan River Academy in Logan, Utah; a therapeutic residential treatment center. At Logan River, Student made somewhat more progress, particularly in forming a trusting relationship with her new therapist, Josh Barson, a licensed clinical social worker. Student did well in Logan River's academic program, earning A's and B's. However, she still cut herself frequently and was still unable to refrain from inappropriate physical conduct with peers. She would seek out inappropriate relationships with peers as young as 13.

Logan River had a system of behavioral rewards that placed students in one of five levels. Student usually earned rewards at a low level. She occasionally behaved well enough to be promoted a level, but would usually be returned to the lower level because she could not control her behavior. She never approached the top level, which would have preceded her successful completion of the program. Logan River found it necessary to maintain what it called "eyesight" surveillance of Student throughout her stay, meaning that staff maintained line-of-sight observation of her at all times. As often as two or three times a week, she stayed at "Dorm Two," a temporary housing facility for students having behavioral outbursts. She did restrain her tendency to elope, probably because Logan River is in a rural area, which discourages elopement. Student eloped from the facility only once, hoping to take a bus to California, but a watching staff member ran after her and brought her back.

Logan River generally serves about 60 to 80 students at a time, all of whom are below the age of 18. Student was 18 years old on August 4, 2018, and threatened to use her newly acquired status as an adult to sign herself out of the program. Parents and Logan River staff persuaded her not to leave, and she signed a document allowing

the facility to keep her. Mother then obtained a conservatorship in a California court in December 2018. The conservatorship allowed Mother to make educational decisions for Student, though it did not allow Mother to have her confined in a mental health facility against her will. Student, nonetheless, remained at Logan River after her 18th birthday.

In order to comply with licensing requirements, Logan River obtained from the State of Utah a waiver of the age requirement that permitted it to serve Student beyond her 18th birthday. However, the waiver was conditioned on a representation that the student was not a threat to the minors in the facility. Barson and his superiors were concerned that Student's inappropriate physical conduct with younger students would expose Logan River to litigation and liability, and perhaps even lead to Student's arrest. At an IEP team meeting on May 2, 2019, Logan River informed Paso Robles and Mother that Student would soon need a new placement.

District Program Specialist Terri Hollen acted as administrator at the May 2019 IEP team meeting. Barson and Pat Limb, Student's teacher at Logan River, appeared on the telephone. Mother participated and was joined by Kirstin La Franchi, a service coordinator for the Tri-Counties Regional Center. La Franchi had been serving as Student's case manager for 14 years and had routinely attended her IEP team meetings. Hollen, Barson, Mother and La Franchi constituted the core of Student's IEP team throughout 2019.

The May 2019 IEP team discussed whether Student should have a home visit but decided against it because of her emotional state. Mother and Barson had agreed to cancel a home visit before the previous Christmas, shortly after Student's father had passed away, for the same reason. According to the notes of the meeting, the team concluded that Student was "not making much benefit from the therapy but benefits best from the structured environment and repetition of routines." Mother stated her

fear that if Student returned home, she would resume the same violent and dangerous behaviors she had exhibited before her placement in Cinnamon Hills. The meeting notes stated: "Team continues to believe that she is not ready to live in the home." The notes added that the District's offer continued to be a non-public school, which all the participants understood to mean a residential treatment center. In response to Logan River's announcement that Student would need a new placement, the team agreed that the Regional Center would investigate group homes and the District would pursue placement at another residential treatment center.

The IEP team members were all aware that it would be difficult to find another residential placement for Student. Few therapeutic residential schools accepted students 18 and older. Many declined to serve the intellectually disabled. Many others would fear the same kind of liability that worried Logan River. Hollen requested that Logan River give the team until August 2019 to find a new placement for Student. For the rest of the school year he contacted several possible residential schools but could not find one that would accept Student.

On August 1, 2019, Sean Maynard, who was Barson's supervisor at Logan Valley, made a tentative written proposal to Hollen to create a program for Student so that she could remain at Logan Valley while diminishing their fears of misconduct and legal liability. Logan Valley proposed to put Student in an off-campus apartment with "wake staff and supervision around the clock" while she continued school either at Logan Valley or the high school portion of the local technical center. In that arrangement she would have opportunities to get a job, volunteer in the community, socialize with other adults, and increase her independent living and vocational skills. Logan Valley cautioned that such an arrangement would be expensive, costing approximately \$18,000

to \$20,000 a month, but it hoped that one or two other female students over 18 could be included, thus substantially reducing costs.

By the time of this proposal, months of effort by Hollen to find a residential placement for Student had been unsuccessful. He nonetheless declined to pursue Logan River's proposal and did not mention it to any other member of Student's IEP team.

#### STUDENT'S RETURN TO PASO ROBLES FOR SCHOOL YEAR 2019-2020

Hollen was still actively considering residential placement for Student in early September 2019. However, Hollen's view of Student's placement needs then changed. He testified that he no longer thought she needed a residential placement, and could be satisfactorily placed in the District's Adult Transition Program while living at home. Blaise Smith, a special education teacher, taught life and vocational skills to adult students at the transition program. Smith explained in his testimony that his class engaged in such exercises as shopping, cooking, cleaning, working at jobs in the community, learning about cell phone safety, and training on other practical skills.

On September 11, 2019, Logan River sent a 20-day notice to Paso Robles, notifying it that Student would no longer be served by Logan River after the end of September. Hollen organized an IEP team meeting for September 19, 2019. On that day, before the meeting, he told La Franchi that the offer would be placement in the Adult Transition Program, which seemed to La Franchi to mean that a placement decision had already been made.

## SEPTEMBER 19, 2019 IEP TEAM MEETING AND IEP

At the IEP team meeting on September 19, 2019, Hollen presented a single possible placement, the Adult Transition Program. No other placement was considered or discussed. Hollen produced a draft IEP placing Student in the Adult Transition Program temporarily. According to the notes of the meeting, the team discussed informing Student of the 20-day notice and telling her that “the placement will not happen right now. [Student] will have to come to Paso Robles temporarily because the team needs a residence placement right now.” The notes of the meeting also showed that the Regional Center would be looking for a “living placement” that was appropriate for Student and that “her educational programming offer will change based on [her] progress within the educational setting.” But the document also asserted that the team believed that “[Student] has made tremendous growth in the current program and is ready for a transition to a less restrictive environment.”

At hearing, the parties vigorously disputed the degree to which anyone at the September 19, 2019 IEP team meeting, except Hollen, supported moving Student to the Adult Transition Program. Hollen testified he believed the whole team agreed with him. Program Specialist Anusheh Agha, who took notes at the meeting, testified that she also perceived a consensus of the team, and the notes she wrote were consistent with that perception.

La Franchi, however, routinely noted developments concerning Student in the Regional Center’s computers. Her notes stated that at the September 19, 2019 IEP team meeting, Mother asked about another residential placement, and Hollen responded that the data no longer supported Student’s need for it. La Franchi and Mother testified that they thought a decision to bring Student home had already been made. Barson’s testimony was hedged; he did not appear to support the move, but did not vigorously

object to it, at least at that meeting. Previously he had clearly stated in conversations and writings that he believed Student still needed a residential placement, or at least a placement somewhere that could provide what he described as "24/7" professional supervision. According to their testimony at hearing, none of those three witnesses agreed that Student had made tremendous progress or that she was ready to leave some form of residential treatment.

It is not necessary to resolve this conflict in testimony about the discussion at the September 2019 IEP team meeting because it does not matter to the outcome. An IEP offer either provides a FAPE or it does not, according to the tests of *Rowley, supra*, 458 U.S. 176, and *Endrew F., supra*, 137 S.Ct. 988. That analysis does not change depending on the unanimity or enthusiasm of the members of the IEP team that produced it.

In its final form, the September 19, 2019 IEP provided for: "Full day placement in the Adult Independent Skills Program that focuses on functional and vocational skills with therapeutic supports (school based counseling) and 1:1 supervision provided by the district." It also included transportation by bus, with seating for Student to be in the driver's line of sight "as [Student] has demonstrated poor boundaries with peers."

The September 2019 IEP also contained several references to services that were to be provided by Logan River, the Regional Center and others. Barson offered to provide bridge counseling for the transition in joint sessions with Student's new school counselor. The meeting notes stated: "Team discussed mental health support in the home setting as well that Tri-counties rep stated parent can connect with private insurance for." Paso Robles promised to try to find a direct flight back to California for Student, after which Student's sister and a friend would drive her home from Los Angeles International Airport.

Mother, believing she had no choice and not knowing where else Student might be placed, agreed to the proposal. Student came home from Logan River on October 1, 2019, and after a brief period of adjustment began school on October 8, 2019. She was still attending the Adult Transition Program on November 5, 2019, when her annual IEP team meeting was held.

#### NOVEMBER 5, 2019 ANNUAL IEP TEAM MEETING AND IEP

At the November 5, 2019, annual IEP team meeting, the members discussed Student's difficulties in adjusting to her new placement. She was working successfully at various small jobs in the community, but had sometimes become oppositional and disruptive, and at times had stolen, lied, and transgressed personal boundaries on the bus. The IEP team nonetheless continued Student's placement in the Adult Transition Program. Hollen testified that in his view there was not enough evidence at the annual meeting to support returning her to a residential placement.

On or about November 8, 2019, Student eloped from a school outing, but was followed and persuaded to return. On November 15, 2019, she eloped again, and never returned to school.

#### STUDENT'S READINESS TO LEAVE RESIDENTIAL TREATMENT IN SEPTEMBER 2019

#### THE DATA AVAILABLE TO THE IEP TEAM

The parties' central dispute is whether the September and November 2019 IEP's placing Student in the Adult Transition Program while she lived at home were reasonably calculated to allow her to obtain educational benefit in light of her circumstances within the meaning of *Rowley, supra*, 458 U.S. 176, and *Endrew F., supra*,

137 S.Ct. 988, though not providing for a residential placement. That issue turns on whether, as Student contends, the IEP team in September and November 2019 knew or should have known that she was not yet ready to access her education without the round-the-clock supervision and support that only some kind of residential placement could provide.

Paso Robles argues that the data available to it in September and November 2019 showed that Student had been so successful at Logan River that she was ready for a "step down" program that was not so restrictive, and that the Adult Transition Placement was an appropriate step down placement. By the time of the September 19, 2019 IEP team meeting, the principal source of information about Student's progress at Logan River was a set of monthly written reports by Barson. The reports chronicled Student's progress from March 2018, when she arrived, to August 2019, the last month before she left. Hollen also spoke frequently to Barson on the telephone, and Mother spoke to him during family therapy and in visits.

All the monthly reports were introduced in evidence. Every month that Student was in Logan River, her treatment team would meet and produce a "treatment plan review." The review described her status that month across several domains such as therapy, behavior in the residential unit, and academics. Collectively these reports showed that while Student was at Logan River, some aspects of her behavior did improve, but her progress was uneven, and she had frequent setbacks. She made intermittent progress on self-harm and violating the personal boundaries of peers, but she was far from understanding those behaviors or being able to change them. For example, toward the end of her stay, she was still cutting herself to relieve stress on an average of once a month, which was about the same rate she was cutting herself when she entered Cinnamon Hills. Her boundary transgressions continued, and were serious

enough to cause Logan River to fear liability and to ask Paso Robles to seek a different placement.

In his testimony, Hollen placed particular importance on the four end-of-the-month reports from May, June, July and August 2019, which arrived after the May 2, 2019 IEP team meeting. These are the reports he believed showed the “tremendous progress” mentioned in the September 19, 2019 IEP notes and justified his decision that residential placement was no longer required. However, that was not a reasonable reading of those reports. Most basically, all four of the most recent monthly reports stated this conclusion: “[Student] does not currently possess the skills to function safely in a less structured environment.” And Barson, the author of the reports, consistently maintained in communications with the parties, and in his testimony at hearing, that during this period he always believed that Student required residential placement, if not at Logan River, then at some similar institution with around-the-clock support. Neither the language of the reports, nor the author’s intent, supported Hollen’s optimistic interpretation.

The reports themselves were mixed. They did mention incremental progress, but also emphasized Student’s continuing behavioral challenges. The report on May 2019 stated that Student had her best month yet because she did not harm herself during the month. This was likely because of “improved distress tolerance” and being transferred to a smaller group of students. The report noted “some improvement” in Student’s ability to discuss difficult thoughts and feelings with Mother during family therapy. It also stated that Student had improved in her ability to speak up in her dormitory group, where she had been quiet in the past. It stated that she had improved in “not stirring things up with peers and staying out of drama which has been a challenge in past months.” However, the May 2019 report also mentioned that Student had difficulty with

a “negative cognitive belief” that she was a burden to others. It noted she showed “some improvement in maintaining boundaries but requires a lot of supervision and prompts to do so.”

The report on June 2019 was less encouraging. Student had cut herself again, and as Hollen was told at the time, the incident involved 56 cuts. She showed “some improved insight” into the importance of physical boundaries but still had difficulty maintaining them. She “need[ed] to improve her boundaries with peers” and was seeking a romantic relationship with one. Student “would likely not be able to maintain [boundaries] without 24/7 staff supervision and prompts,” was pushing the limits of healthy interaction, and “continues to require constant supervision and prompting for having appropriate boundaries with peers.”

The report on July 2019 was similar to the June report. Student had another incident of self-harm. Her behavior in the residence was improving, and she was beginning to understand the importance of maintaining physical boundaries. But she had not translated that understanding into action and still required around-the-clock supervision and support to restrain her conduct.

The final report, on August 2019, stated that Student had had one incident of self-harm that month, although she had reduced the frequency of self-harm and had not been hoarding sharp objects “as often” as in previous months. It also reported improvement in resolving conflicts with peers. It stated that Student had improved her respect for physical boundaries and “has not needed as many prompts to be appropriate but this still remains a concern and an area to focus work on.” Like all its predecessors, the final report from Logan River concluded that Student “does not currently possess the skills to function safely in a less structured environment.”

Those four most recent monthly reports from Logan River could not reasonably be read as supporting the degree of improvement that Hollen professed to see in them. The two most consistent themes in the reports were that Student was still engaging in self-harm nearly once a month, and that she could not maintain proper physical boundaries with peers without supervision day and night.

Hollen's perception in mid-September 2019 that Student was ready to come home was also contradicted by his conduct. Between the May 2, 2019 IEP team meeting at which he and the other members agreed Student needed another residential placement, and into early September 2019, Hollen expended considerable time and effort searching for a residential placement for Student. This effort, which implied a willingness to dedicate substantial District resources to another residential placement, would not have been undertaken by a special education professional who believed it was time for Student to come home and take District classes.

In August 2019, Hollen was promoted to Director of Special Education. He continued to look for a residential placement for Student. He focused on a possible placement in the Sanger Place Mental Health Rehabilitation Center, a subacute psychiatric hospital nearby that had a residential unit but no educational program. Hollen tentatively proposed that Paso Robles pay up to \$10,000 to add an educational component to a possible placement at Sanger, and that the Regional Center pay for the residential costs. On August 21, 2019, Hollen and a colleague visited Sanger and were enthusiastic about it. Hollen sought and got the "green light" from his superiors to pay for the day portion of the program. However, the Regional Center's limit on the money it could provide would have required Paso Robles's contribution to be more than \$14,000. Therefore, on September 6, 2019, Hollen ceased pursuing the Sanger

possibility. This was only 13 days before the IEP team meeting at which he reported his change of view.

In his testimony, Hollen also emphasized, somewhat inconsistently, a phrase in a report from Barson that he did not know how much Student was benefitting from her therapy sessions. Hollen cited this to other IEP team members as meaning that Student was not getting anything from therapy, and that was another reason she should come home. On May 22, 2019, he wrote broadly to another treatment center that Student “really has not benefited from mental health.” He did not explain how she could be making tremendous progress and, at the same time, could be failing to benefit from therapy.

Collectively, the reports from Logan Valley, Barson’s views and statements, and Hollen’s conduct from May to September 2019 render Hollen’s revised opinion that Student no longer needed a residential placement unreasonable and implausible.

#### DR. SOLOMON’S TESTIMONY

Student presented the expert testimony of Dr. Paula Solomon, a licensed clinical psychologist with a private practice in Santa Rosa. Dr. Solomon had a doctoral degree in clinical psychology from the Pacific Graduate School of Psychology in Palo Alto. For 25 years, Dr. Solomon was the clinical director of TLC Child and Family Services, a treatment center in Sebastopol that offered residential treatment, outpatient treatment, assessments, and school and foster care services to emotionally disturbed youth. Dr. Solomon trained and supervised all TLC staff involved in therapy, including social workers, program managers, clinicians and interns. She wrote the center’s procedural manual, and also conducted many assessments and provided direct therapy to the center’s patients. From her work at TLC and in a wide variety of related roles including

teaching and consulting, Dr. Solomon had gained a thorough understanding of the residential and nonresidential treatment of emotionally disturbed youth.

Student was not available for Dr. Solomon to interview. Instead, she prepared for her testimony by interviewing Mother and La Franchi, and by examining most of the files in Student's educational record, including IEP's, treatment goals, treatment plans and assessments generated since Student was two years old. Dr. Solomon then interviewed by telephone a supervisor at Cinnamon Hills and numerous employees of Logan River, including Barson, his supervisor Sean Maynard, and Student's teacher Pat Limb. She obtained and examined Student's treatment plan and treatment goals at Logan River. She also conducted a review of the literature relating to adolescent self-harm, specifically cutting by high school students.

Dr. Solomon was very well qualified to render opinions on residential placements and procedures. She was forthright in her testimony, but was also careful to qualify her statements and avoid exceeding the scope of her expertise. Her opinions were balanced, measured and thoughtful. She had mastered Student's records so thoroughly that she could recount them in detail without looking at them. Her testimony was not undermined on cross-examination. Dr. Solomon was a credible witness, and her opinions are given substantial weight here.

Dr. Solomon opined that in September 2019, Student was not nearly ready to leave residential treatment. She gave these reasons, all of which were supported by the record:

- Student was still struggling with the two major challenges that had brought her to residential treatment, namely, self-harm and poor respect for physical boundaries. After a year and a half at Logan River, there had been a slight

reduction in the frequency of self-harm, but she was still cutting herself on an average of about once a month. She never went more than five to six weeks without an incident of self-harm. Overall, at Logan River, she cut herself 35 or 36 times. Logan River was still required to conduct frequent searches of her body and her quarters to confiscate sharp objects that she hoarded for this purpose.

- Student was still engaging in the inappropriate sexual touching of minor peers, and doing so to the degree that Logan River feared for its legal liability if it continued to permit her to interact with them. After a year and a half of treatment there, she still wanted to start a romantic relationship with a 13-year-old. She and another female student were caught on camera masturbating in an otherwise empty classroom.
- Student had to be under constant surveillance to prevent her from hurting herself, eloping or transgressing the physical boundaries of her peers. She never earned the right to walk the grounds and rarely could join in community outings. She could not be adequately supervised even under the normal level of security at Logan River. During her entire stay there she was on "eyesight" status, which meant that she had to be in the staff's line of sight at all times. Staff followed her everywhere, even into a dormitory. Student made only one attempt at eloping, but she was brought back because staff saw her leave and were right behind her. As often as two or three times a week, Student was put in Dorm Two because of behavioral outbreaks, and on one occasion spent an entire week there.
- Student had not met Logan River's treatment goals, which were roughly analogous to annual goals in an IEP. Student had five treatment goals, none of which she had met. She had fourteen sub-goals and had met only five of them. She did not qualify for return to a less restrictive program under Logan River's criteria for discharge. She also had not met the goals in her most recent IEP.

- Student never reached, or even came close to, the top of Logan River's five-level system of rewards for good behavior, which would normally have been required to demonstrate readiness to leave.
- Student had never successfully completed a home visit. A home visit was tentatively scheduled twice, in fall 2018 and spring 2019, but was cancelled both times because Logan River staff and Mother thought Student was not sufficiently emotionally stable to succeed.
- Student was more successful academically in the residential setting than she ever had been before. She loved going to class, although her academic success required a class having only three or four other students, an aide, and a teacher. A larger class would make her anxious and interfere with her ability to concentrate.
- Student was benefiting from at least some of the therapy Barson provided, which included family and group therapy as well as individual therapy. She was not likely to benefit from "insight" therapy, which required understanding at a cognitive level she could not achieve. But she did benefit from cognitive behavioral therapy, which was much more concrete and practical. Her records showed progress in therapy, though "at a snail's pace."
- The seriousness of Student's condition was illustrated by the "slew" of mood-stabilizing medications she was taking in September 2019. They included Lamictal, Trazodone Hydrochloride, Klonopin, Zoloft and Amantadine Hydrochloride. It would not be unusual for a patient entering treatment to be prescribed these medications, but for someone about to leave, it was "an amazing cocktail."

- The fact that many residential treatment centers were unwilling to serve Student also indicated the seriousness of her condition.
- Logan River wanted to continue Student's treatment. No one at Logan River thought Student was ready to succeed without the safety and support of an environment that provided around-the-clock support.

Dr. Solomon also visited the Adult Treatment Program. She found that it was well organized, provided kind and gentle treatment to the emotionally disabled young adults it served, properly individualized their instruction and taught the kind of vocational and life skills Student needed to learn. However, at hearing Dr. Solomon opined that even on the incorrect assumption that Student was ready to leave residential treatment, the program provided by the September and November 2019 IEP's was insufficient to meet her needs. Dr. Solomon gave these reasons, all of which were supported by the record:

- The program addressed the intellectual disability aspects of Student's challenges, but it did not adequately address her serious emotional disturbance. The program did not have in-house mental health support. Instead, a school counselor would visit when needed and would provide counseling to Student for about 45 minutes a week. This was not enough, because it was predictable that emotional disturbance would undermine her ability to benefit from the program.
- The program did not provide adequate behavioral support because it provided only the support of a one-to-one aide at school, and a special seating arrangement on the school bus that kept Student in the driver's sight to deter her from inappropriate physical approaches to her peers.
- The counselor and the one-to-one aide provided support only during the school day, but Student needed support around the clock. Dr. Solomon stated that she

did not know how Mother would keep Student safe from 5:00 p.m. to 8:00 a.m. every day.

- Placement directly in the Adult Transition Program bypassed all the intermediate options usually employed for the return of a troubled student from residential treatment to home. Around-the-clock support was available in other less restrictive treatment centers, and in day treatment facilities, group homes and the like. For example, Dr. Solomon remembered that TLC received step down placements from Logan River and similar facilities.
- Paso Robles failed to provide for any transition from the Utah residential treatment center to the Adult Transition Program and home. It was routine for students leaving residential treatment to do so gradually. The methods used included overnight stays with visiting parents, supervised trips in the community, a local class, a weekend at home, and similar short steps. These intermediate measures allowed parents and therapists to monitor a student's readiness to make the full transition and make adjustments as necessary. The only transitional service Paso Robles provided for Student was obtaining a direct flight from Utah to Los Angeles International Airport.

Dr. Solomon therefore persuasively established two critical facts. First, Student was far from ready to leave residential treatment, or at least to leave an environment that offered safety and support around the clock. Second, even if she had been ready, the program actually provided by her September and November 2019 IEP's was inadequate to meet her needs. Paso Robles did not call any expert witness to disagree with Dr. Solomon's conclusions.

## THE DISTRICT'S DEFENSES

### MENTAL HEALTH AND BEHAVIORAL SUPPORT AT HOME

The principal failing of the Adult Transition Program placement was that it required Student to live at home. Because of her disruptive and violent history in the home before she was placed in Cinnamon Hills, most of Student's IEP team assumed in spring 2019 that, wherever she would be placed, it would not be in the home. The notes of the May 2, 2019 IEP team meeting stated: "[T]eam continues to believe she is not ready to live in the home."

La Franchi's notes show that, throughout the summer, she and Mother repeatedly discussed their opposition to a home placement and their fears of its consequences. And Barson never endorsed any placement that involved Student living at home. He and Mother had even decided in fall 2018 and spring 2019 that home visits were unduly risky. La Franchi's notes show that on September 10, 2019, she advised Hollen that she and Mother believed placing Student at home "would likely result in her putting herself in danger" and "would also jeopardize safety of other students."

When it appeared that Paso Robles might insist on placing Student in the Adult Transition Program and requiring her to live at home, La Franchi began to take steps to assist Student as well as she could. She authorized the use of crisis support, and obtained from her employer a formal finding that Student's home was not a safe place for her, which made available sufficient funds to permit hiring in-home mental health support for Student. Student's older sister had been a psychology technician and was temporarily living in the home. La Franchi contracted to pay her for 455 hours of service in the home providing mental health support to Student.

Paso Robles now contends that its IEP's should be analyzed as if they included the Regional Center's in-home mental health support. In arguing that its September 2019 IEP provided Student a FAPE, Paso Robles describes the details of its offer as including "wrap around supports being offered by TCRC (nearly full time 1:1 support by a psych tech in the home setting)." That description is inaccurate. Neither the September 2019 IEP nor the November 2019 IEP included any in-home mental health support.

Paso Robles cannot avoid that failing by incorporating a service provided by the Regional Center. In *M.S. v. Los Angeles Unified Sch. Dist.* (9th Cir. 2019) 913 F.3d 1119, 1121, the student had been residentially placed by the County Department of Children and Family Services for mental health reasons pursuant to a court order.

The Ninth Circuit nonetheless held that because the student required residential placement to access her education, the school district had an independent obligation to offer that placement in her IEP. (See also *B.H. v. Manhattan Beach Unified Sch. Dist.* (2019) 35 Cal.App.5th 563, 587-589 [district responsible for residential placement funded by Department of Children and Family Services].)

The same principle applies here: because Student required in-home mental health support to access her education, Paso Robles was independently required to offer that service in her IEP even though the Regional Center was funding the service pursuant to its own standards.

Placing that obligation in Student's IEP would have enabled Mother to enforce the district's duty. "Parents must be able to use the IEP to monitor and enforce the services that their child is to receive." (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1198.) By failing to put the related service of in-home

mental health support in Student's IEP, Paso Robles deprived Student of a mechanism to enforce the District's obligation to provide that service. The Regional Center could have altered or ended its in-home arrangement at any time, and Mother would have had no recourse against the District. The September and November 2019 IEP's were not reasonably calculated to allow Student to benefit from her education, in part because they required her to live at home but failed to ensure any in-home mental health support.

Even if the disputed IEP's were credited with the Regional Center's in-home service, that service was insufficient. La Franchi supplied that service not in the expectation that it would satisfy Student's needs, but as a stop-gap measure while she continued to look for a residential placement for Student. As the IEP team was aware, a similar arrangement had failed to improve Student's conduct in the tenth grade. At that time, Student had in-home mental health wrap-around support, but she would not listen to advice and continued her disruptive, destructive and sometimes violent behavior until she was sent to Cinnamon Hills. There was no reason to believe that a similar arrangement on her return from Logan River would produce a different result.

## RELATIONSHIP OF RESIDENTIAL TREATMENT TO SPECIAL EDUCATION

In the alternative, Paso Robles argues that Student's mental and behavioral challenges were not educationally related, and that it had no obligation to offer residential treatment even if Student needed it, because that need was "a response to medical, social, or emotional problems . . . quite apart from the learning process." (*Clovis Unified Sch. Dist. v. California Off. of Admin. Hrngs.* (9th Cir. 1990) 903 F.2d 635, 643.)

A school district must fund a residential placement if it is “necessary to provide special education and related services to a child with a disability . . .” (34 C.F.R. § 300.104 (2018).) Generally, in order to determine whether a residential placement under the IDEA is necessary to provide a student a FAPE, the inquiry “must focus on whether [the residential] placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process.” (*Ashland Sch. Dist. v. Parents of Student E.H.* (9th Cir. 2009) 587 F.3d 1175, 1185) (quoting *Clovis, supra*, 903 F.2d at p. 643); see also *Seattle Sch. Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

The Ninth Circuit in *Clovis, supra*, 903 F.2d 635, considered three possible tests for determining whether a district must support a residential placement. They were: (1) when the placement is “supportive” of the pupil’s education; (2) when medical, social or emotional problems that require residential placement are intertwined with educational problems; and (3) when the placement is primarily to aid the student to benefit from special education. (*Id.* at 643.)

The evidence showed that Student’s residential placement at Logan River satisfied all of those tests. Student’s placement at Logan River was not quite apart from the learning process. Paso Robles must have recognized the relationship between Student’s behavioral and mental health needs and her education, or it would not have funded two and a half years of residential treatment at Cinnamon Hills and Logan River.

Dr. Solomon established that the safety and security of Logan River was instrumental to Student’s academic success in the center’s school. She made more progress academically than she ever had outside the residential setting, and that was attributable to the residential services and supports she received. Dr. Solomon also opined that Student’s social and emotional needs were intertwined with her ability to

learn, and that residential treatment was required in order for Student to benefit from special education. She explained that without the safety and watchful support of a residential placement, Student was too emotionally dysregulated to benefit from special education. She required 24-hour structure to keep her stable enough to benefit from school. The placement was therefore necessary to support her education. This fact makes Student's situation quite different from that of the student in *Ashland, supra*, whose parents placed her in residential treatment for her behavior at home, not at school. (*Ashland, supra*, 587 F.3d at p. 1185.)

Dr. Solomon's opinions were persuasive for the reasons already identified, and Paso Robles did not introduce any evidence to contradict them.

### LEAST RESTRICTIVE ENVIRONMENT

Finally, Paso Robles argues that by fall 2019, Student's continued placement in Logan River or a similar residential facility would have been unduly restrictive and would have violated the requirement that Student be educated in the least restrictive environment. Federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2006); Ed. Code, § 56040.1.) This means a school district must educate a special needs pupil with nondisabled peers "to the maximum extent appropriate," and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii)(2006); Ed. Code, § 56040.1; see *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398,1403; *Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137.)

Placement in the least restrictive environment is not an absolute. In an appropriate case, it must yield to the necessity that a student receive a FAPE. "The IDEA does not permit, let alone require, a school district to mainstream a student where the student is unlikely to make significant educational and non-academic progress." (*D.F. v. Western Sch. Corp.* (S.D.Ind. 1996) 921 F.Supp. 559, 571 [citation omitted]; see also *Rowley, supra*, 458 U.S. at p. 181, fn. 4.)

In *Rachel H., supra*, 14 F.3d 1398, the Ninth Circuit set forth four factors to be evaluated and balanced in determining whether a student is placed in the least restrictive environment:

- the educational benefits of full-time placement in a regular classroom;
- the non-academic benefits of full-time placement in a regular classroom;
- the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and
- the cost of placing the child with a disability full-time in a regular classroom.

(*Id.* at p. 1404.)

Application of the *Rachel H.* factors here requires the conclusion that Student could not be satisfactorily educated in the program provided by the September and November 2019 IEP's. If she eloped, which was highly likely, she would get no academic or social benefit at all from her program. Dr. Solomon established that, if she appeared at school dysregulated, she would likely have been so unstable that she could not have gained much academic benefit from the instruction.

Student might have socialized with her classmates in the Adult Transition Program, but they all had disabilities, as did her classmates at Logan River. The rule of least restrictive environment relates to exposure to non-disabled peers, and she had no

more of those in the Adult Transition Program than she did at Logan River. In addition, her most troubling characteristic was her opportunistic tendency to approach and sexually touch her peers, especially when they were less cognitively functional than she was. Dr. Solomon established that when she visited the Adult Transition Program, the students were all less functional than Student.

Student 's history in 10th grade, before she went to Cinnamon Hills, demonstrated that when dysregulated she could be quite disruptive. Paso Robles does not complain of the cost of Student's programming, so that factor is not analyzed here.

On balance, under the tests of *Rachel H., supra*, 14 F.3d 1398, Student could not be satisfactorily educated in the program provided by the September and November 2019 IEP's because she needed the attention, safety and support of a residential placement to benefit from her education.

For the reasons that have been identified, Paso Robles denied Student a FAPE by removing her from residential treatment under the terms of the September and November 2019 IEP's. Student was not ready to be educated without the safety and support of a residential placement around the clock, for all of the reasons identified by Dr. Solomon.

Paso Robles also denied Student a FAPE by placing her in the Adult Transition Program and requiring her to live at home. The program provided by the September and November 2019 IEP's did not provide adequate mental health and behavioral support during the school day, and provided none at all outside of school. Student was required to attend it without any transition from the highly regulated environment of Logan River to her home and community. The fatal defects in the September and November 2019 IEP's should have been apparent to Paso Robles when those IEP's were

written. Those IEP's were not reasonably calculated to allow Student to benefit from her special education in light of her circumstances. Student is entitled to relief from those violations of the IDEA.

## AFTERMATH OF THE DISTRICT'S DECISIONS

The conclusions that Paso Robles violated the IDEA by failing to offer a residential placement and by offering an inadequate placement in the September and November 2019 IEP's do not depend on hindsight. The insufficiency of the District's offers was apparent when they were made. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) However, the aftermath of those decisions determines the nature of the relief that can be provided.

Student returned to Paso Robles on October 1, 2019, and began attending the Adult Transition Program on October 8, 2019. Her teacher, Blaise Smith, found her conduct "exemplary" for about three weeks, then it started to deteriorate. She started refusing to work. She took another student's cellphone twice within five minutes. By the time of her November 2, 2019 IEP team meeting, she had sometimes become oppositional and disrespectful. She manipulated her peers. She stole and lied about it. She transgressed personal boundaries on the bus even though she was in the driver's line of sight. On November 15, 2019, she eloped and never returned.

Student's decline at home paralleled the deterioration of her behavior at school. According to Mother, she had a "honeymoon" period for two to three weeks, but then began to be disobedient and disrespectful and to refuse to follow rules. She eloped several times. She began to cut herself again. She spent nights out in the neighborhood, or sometimes at the nearby house of the man who had raped her when she was 16. At one point she moved her belongings to his house. The police sometimes

brought her home. At some point around this time she attended a school dance and, though chaperoned, "behaved inappropriately with a boy," as Mother put it. In the ensuing controversy she cut herself badly enough to be taken to the hospital. At another point her male companion called Mother to report that Student had swallowed the contents of an entire bottle of Zoloft, and police took her to the hospital on an involuntary hold, using the provisions of Welfare and Institutions Code section 5150.

La Franchi finally found a group home, the Sunshine Residential Home in Los Angeles, that would accept Student. Acting on the authority of Mother's conservatorship, the Regional Center obtained a transportation team who took Student from the hospital to the Los Angeles group home on or about November 19, 2019. Paso Robles was not involved in this decision and did not learn of it until some days later.

Student spent a few days at the group home but escaped out a window. The events that followed are only vaguely described in the record because Mother received only indirect reports. Student was returned at least once to a branch of the Sunshine facility, but quickly eloped again. Student was apparently picked up by police twice, and at least on one occasion eloped out of an ambulance taking her to a hospital. She was last seen by anyone in authority on December 26, 2019, and is presumed to be somewhere on the streets of Los Angeles. The Los Angeles Police Department still classifies her as a missing person.

ISSUE NO. 1: DID PASO ROBLES DENY STUDENT A FAPE IN THE 2018-2019 SCHOOL YEAR, INCLUDING EXTENDED SCHOOL YEAR, BY FAILING TO CONDUCT A BEHAVIOR ASSESSMENT AND A MENTAL HEALTH ASSESSMENT?

It is not necessary to decide this issue. Paso Robles may have violated the IDEA in the spring of 2019, when it learned that Student would be leaving Logan River, by failing to conduct behavior and mental health assessments. But such assessments would likely not have been completed and reported on by the end of the school year, or had any effect on Student while she was at Logan Valley. Those procedural violations, if they occurred, would not have ripened into denials of FAPE until they did some injury to Student's education or significantly impeded Mother's participatory rights. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2).) That would not have happened until the September 19, 2019 IEP team meeting, when the absence of assessments might have affected the team's decision-making and Mother's participation. It is already determined that Paso Robles denied Student a FAPE and is entitled to relief, starting on September 19, 2019, and that relief would be no different if Paso Robles did fail to assess.

ISSUES NO. 2.D AND 2.E: DID PASO ROBLES DENY STUDENT A FAPE IN THE 2019-2020 SCHOOL YEAR BY FAILING TO TIMELY CONDUCT STUDENT'S ANNUAL IEP TEAM MEETING AND FAILING TO OFFER GOALS IN ALL AREAS OF NEED, SPECIFICALLY READING DECODING, READING FLUENCY, READING COMPREHENSION, MATH, WRITTEN EXPRESSION AND MENTAL HEALTH?

As Student agrees in her closing brief, if Paso Robles's decision not to provide Student a residential placement violated the IDEA there is no need to decide these issues. Any violation identified by these issues would have had consequences for Student starting on September 19, 2019. The relief ordered here begins on that day and would be no different whether or not these violations occurred.

## CONCLUSIONS AND PREVAILING PARTY

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

Issue 1 was not decided.

Issues 2.a, b. and c: The September 19 and November 2, 2019 IEP's did not offer Student a FAPE. Student prevailed on Issues 2.a, b and c.

Issues 2.d. and e. were not decided.

## REMEDIES

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student's current needs. (*Puyallup, supra*, 31 F.3d at p. 1496; *Reid v. District of Columbia* (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." (*Reid, supra*, 401 F.3d at p. 524.)

However, hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.) "[E]quitable considerations are relevant in fashioning relief." (*Burlington, supra*, 471 U.S. at p. 374.)

No one involved in these proceedings knows when or if Student will return to school or home, or knows what her condition will be if and when she does. As Dr. Solomon pointed out, her condition is unlikely to be good. Among many other reasons, she has not had her medications since December 26, 2019.

The parties and Dr. Solomon agreed that the first requirement of any relief is that Student must be found and given an opportunity to return to safer surroundings. Mother proposes that Paso Robles be required to employ a private investigator to locate Student, and has identified one who is qualified and willing to do so. Allen Cardoza is licensed by California as a private investigator and is the founder of West Shield Adolescent Services, a corporation that specializes in crisis intervention and the transportation of youth and adults. His firm has been in business since 1981, and has developed a successful practice contracting with county mental health facilities, social service agencies, jails, juvenile facilities and a variety of other specialized programs. It also has contracted with 112 school districts, including Paso Robles. During its existence it has transported more than 12,000 people. It has a success rate of finding and returning people that exceeds 97 percent.

Cardoza established in his testimony that he and his employees are highly trained in a wide variety of crisis intervention techniques, and some of his employees train others in those techniques. Cardoza stressed that his company's methods do not include seizing people off the streets. When they get close to finding someone, they employ sophisticated methods of persuasion and usually work with the assistance of local police. Cardoza was familiar with Student's situation and was "comfortable" transporting her as long as he had specific lawful authorization from the conservator. He does not transfer people to locked mental health facilities. His organization is well suited to finding Student if possible, and Paso Robles will be required to employ it for that purpose.

If Student returns, it is highly likely that she will require a period of hospitalization and medical treatment, which cannot be predicted or regulated by the Order made here. However, as Dr. Solomon established, once Student has been stabilized sufficiently that

her future can be considered, it is almost certain that she will need placement in a residential treatment center. The greatest barrier to such a placement is that Student may not be willing to sign herself into one, or stay there if she does.

At IEP team meetings and at hearing, the parties have disputed whether Mother's authority as conservator includes the power to enroll Student in a facility she is not allowed to leave. In January 2020, Paso Robles found a possible placement for Student at a Devereux Advanced Behavioral Health facility in Texas, which was tentatively willing to serve her. Texas is one of four states that does not recognize out-of-state conservatorship powers. Mother argues that her newly amended conservatorship authority allows her to place and keep Student in a treatment center against her will, but the Devereux facility informed her and Paso Robles that even if Mother had a Texas conservatorship, it would require Student to sign in of her own free will. It described its practice of heavily discouraging patients from leaving the facility on their own with methods such as a series of meetings, delays, and attempts at persuasion, but in the end it would not prevent a patient from departing, whatever authority a conservator might have.

Mother asks that Paso Robles be ordered to place Student in an appropriate residential treatment center that will accept her, that is in one of the 46 states that accepts California conservatorship powers, and from which Student could not leave on her own. That relief will not be granted. Student did not prove such a facility exists. Nor did she prove that Mother's California conservatorship powers extend to the involuntary confinement of her daughter. The most recent order of the Superior Court defining her authority allows her to make medical decisions for Student even if she objects to them, "subject to the limitations stated in Probate Code section 2356." That statute provides that a conservatee "shall not be placed in a mental health treatment

facility under this division against his or her will,” and that such a placement may be obtained only under sections 5150 and 5350 of the Welfare and Institutions Code. (Prob. Code, § 2356, subd. (a).)

Mother now claims that by negative implication, the prohibition on involuntary placement in a “mental health treatment facility” (Prob. Code, § 2356, subd. (a)) does not bar involuntary placement of a conservatee in any other kind of locked facility, such as a “school-based residential treatment center (whether locked or unlocked).” However, no authority supports such a distinction, even if it were clear what a “school-based” residential treatment center might be. It is highly unlikely that the Legislature would surround involuntary mental commitment with such careful procedural protections as are provided in Welfare and Institutions Code sections 5150 and 5350 and then ignore such protections for every other kind of involuntary commitment by a conservator, merely by a negative implication in the Probate Code. Such a construction cannot be inferred when the subject matter is individual liberty. Whether the Superior Court could make Mother’s authority more clear is up to that court.

Mother also requests that once Student has returned to safer surroundings, has received needed medical and psychiatric care, has been appropriately placed in a residential treatment center and has been assessed, an additional hearing be held in this matter to determine further compensatory remedies. This request will also be denied, as it would prolong this proceeding far past the time in which Congress required its completion, and potentially prolong it indefinitely. As long as Student is conserved and Paso Robles still has the obligation to provide Student a FAPE, it will be making educational programming decisions that will be subject to due process requests if Mother disagrees with them.

There is a practical limit to the relief that can be provided here, since it is not known whether Student will return, what her condition will be, or whether she will be amenable to treatment. The Order can structure and encourage assistance to her in obtaining an educational placement, but the ALJ does not have the authority or inclination to order her involuntary confinement. In addition, any program of intervention, therapy, or compensatory or other education will not be likely to succeed without at least some degree of cooperation from Student.

It is equitable to award Student compensatory education for the therapy she would have received had she remained at Logan Valley, which was two 50-minute sessions a week of therapy by a licensed clinical social worker. That therapy should, as suggested by Dr. Solomon, focus on cognitive behavioral therapy rather than insight therapy. It is also equitable to award Student a minimum of 41 hours of individual tutoring sessions by an instructor who is a credentialed special education teacher or who has equivalent credentials, and who shall deliver a curriculum consisting of life skills and vocational training. Those hours are calculated at the rate of one hour of individual instruction for each of the 41 school days between September 19 and November 19, 2019, inclusive.

## ORDER

1. Paso Robles shall promptly employ West Shield Adolescent Services, or if that is not possible an equivalent service, to locate Student and attempt to persuade her to return to safer surroundings. Paso Robles shall fund a minimum of 50 hours of professional time and expenses for this effort.
2. Paso Robles shall allow Student to access all the assistance and services ordered herein beyond her 22d birthday. The time beyond Student's 22d birthday during which the ordered assistance and services shall be made available to her shall

equal the number of days between December 26, 2019, and Student's return to safer surroundings and submission to treatment, up to a maximum of an additional 24 months. Paso Robles's obligation to provide Student the program set forth in this Order shall cease at the end of that period, or on her 24th birthday, whichever comes first. The obligation to provide the therapy, in-home support and tutoring ordered here shall be suspended during any time Student is actually attending a residential treatment center, and shall cease at the end of the time period defined in this paragraph. Paso Robles's obligations under this Order shall be met whether or not Student resides in the District.

3. If Student returns to safer surroundings, Paso Robles shall cooperate in all reasonable respects with any medical, psychiatric or psychological intervention that she may require. As soon as Student's treating professionals will permit it, Paso Robles shall make available to Student two 50-minute sessions a week of cognitive behavior therapy delivered by a licensed clinical social worker of Mother's choice. If Student lives in Mother's home during all or part of this time, Paso Robles shall also make available to Student in-home mental health support by a psychiatric technician, including daily contact and home visits as needed in the discretion of the provider and under the direction of Student's District-funded therapist.
4. As soon as Student's treating professionals agree it is advisable, Paso Robles shall make available to Student compensatory education to compensate for its denial of FAPE from September 19, 2019, to November 19, 2019. This compensatory education shall take the form of a minimum of 41 hours of individual tutoring sessions by an instructor who is a credentialed special education teacher or who has equivalent credentials, and who shall deliver a curriculum supplied and

supported by Paso Robles consisting of life skills and vocational training. It shall be delivered on a schedule agreed to by Mother, Student and the tutor.

5. If Student is absent from any scheduled tutoring session without 24 hours' notice, Paso Robles may subtract that session from the total due her. With or without adequate notice, if Student is absent from any scheduled tutoring session for a reason that is not treated as an excused absence under the District's standard practices, Paso Robles may subtract that session from the total.
6. Within 15 days of Student's return to safer surroundings, Paso Robles shall begin to search for an appropriate residential treatment center that will accept Student and that can continue her education while providing adequate mental health and behavioral supports. As soon as Student's treating professionals will permit it, Paso Robles shall convene an IEP team meeting to attempt to agree with Mother and Student on a proper educational placement, or at least on the parameters of a search for such a placement. Student shall be invited to any IEP team meeting that concerns her. Paso Robles shall fund Dr. Solomon's appearance at that meeting for consultation, and shall additionally fund 20 hours of consultation by an educational placement specialist of Dr. Solomon's choice if Dr. Solomon recommends it.
7. If an appropriate residential placement is located and agreed upon, Paso Robles shall incorporate that placement in an IEP and fund the placement until the end of the period described in paragraph 2 of this Order, or until Mother, Student and Paso Robles agree otherwise, whichever comes first.
8. Any IEP offered to Student by Paso Robles shall contain an express statement of the mental health and behavioral supports to which she is entitled, without regard to the obligations or commitments of any other agency.

9. The terms of this Order may be altered by a written agreement between the parties. An IEP can constitute such an agreement.
10. Student's other requests for relief are denied.

## RIGHT TO APPEAL THIS DECISION

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

*/s/*

Charles Marson

Administrative Law Judge

Office of Administrative Hearings