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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ESCONDIDO UNION HIGH SCHOOL DISTRICT,

Plaintiff,

vs.

JEFFREY FIDEL, et al.,

Defendants.

CASE NO. 09-CV-1948 W (CAB)

ORDER:

- (1) ADOPTING REPORT AND RECOMMENDATION [DOC. 26],**
- (2) OVERRULING PLAINTIFF’S OBJECTIONS [DOC. 27], AND**
- (3) AFFIRMING DECISION OF CALIFORNIA OFFICE OF ADMINISTRATIVE HEARING**

On September 4, 2009, Plaintiff Escondido Union High School District (“District”) filed a complaint under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, to reverse the decision of an administrative law judge (“ALJ”) from the California Office of Administrative Hearing. On July 14, 2010, United States Magistrate Judge Cathy Ann Bencivengo issued a Report and Recommendation (“Report”) recommending that this Court affirm the ALJ’s decision.

1 The Court decides the matters on the papers submitted and without oral
2 argument. See Civ. L.R. 7.1(d)(1). For the reasons outlined below, the Court
3 **ADOPTS** the Report in its entirety (Doc. 26), **OVERRULES** the District's objections
4 (Doc. 27), and **AFFIRMS** the ALJ's decision.

5
6 **I. BACKGROUND**¹

7 Alixandra Fidel ("Student") is the daughter of Defendants Jeffrey Fidel and Julie
8 Fidel ("Parents"). Student was born March 21, 1990, making her now twenty years old.
9 She resides with her family within the District's boundaries. (AR 1081 [Doc. 18].²)
10 After the 2007-2008 school year, Student received her high-school diploma from the
11 District. (*Id.*) The District is a public school district responsible for providing children
12 eligible for special education who reside within its jurisdiction with a Free Appropriate
13 Public Education ("FAPE") as required under the IDEA, 20 U.S.C. § 1400 *et seq.*, and
14 the implementing provisions of the California Education Code, Cal. Educ. Code §
15 56320. (*Id.*)

16 Student entered her freshman year at Escondido High School during the 2004-
17 2005 school year. (AR 1081.) She was an exceptional student enrolled in the most
18 competitive Honors and Advanced Placement (AP) courses throughout her freshman
19 year and the first half of her sophomore year. (AR 1082.) English teacher Patricia
20 Phillips described Student as one of the best students she ever had and as a "genius."
21 (AR 1087.) By the end of the first semester of her freshman year, Student earned a 4.50
22 grade-point average (GPA). (AR 1081.)

23 _____
24 ¹ The District objects to the Report's recommendation to defer to the ALJ's
25 determination that Ms. Walker's testimony is not credible. (*Objection* 15–17 [Doc. 27].) It
26 does not object to any other factual findings by the ALJ. (*See id.*) As such, this section
primarily summarizes the factual background presented in the ALJ's decision.

27 ² References to the Administrative Record will be designated as "AR" followed by the
28 appropriate page number.

1 Student continued her academic excellence by earning a 4.33 GPA for both the
2 second semester of her freshman year and the first semester of her sophomore year. (AR
3 1082.) She also participated in the Academic League as captain during her freshman
4 year and as a member of the Junior Varsity team during her sophomore year. (*Id.*)
5 During this time, Student developed close relationships with her teachers and school
6 counselor Pam Walker, even though she was officially assigned to another school
7 counselor, Connie Absher. (*Id.*) However, during the second semester of her
8 sophomore year, Student began sliding into a depressed state. (*Id.*) She secretly began
9 consuming alcohol. (*Id.*) She also began losing interest in Academic League and would
10 rarely attend practice. (*Id.*) By the end of the second semester, Student's GPA had
11 fallen to 3.83. (*Id.*)

12 On July 1, 2006, Student's depression worsened and she attempted suicide by
13 ingesting over-the-counter medication. (AR 82–84, 1082.) She was hospitalized from
14 July 2 through July 11, 2006. (*Id.*) At discharge, Student was released to out-patient
15 care and placed on psychotropic medication. (*Id.*) She was diagnosed with “major
16 depressive disorder, single episode, severe, with recent parasuicide” and generalized
17 anxiety disorder. (AR 82, 84.)

18 Prior to the start of her junior year, Student's parents became concerned about
19 Student's academic stress caused by the number of her AP courses in light of her
20 attempted suicide and related psychological problems. (AR 1083.) In August 2006,
21 Student's mother Julie Fidel telephoned Ms. Walker for assistance because of Student's
22 close relationship with her. (*Id.*) Specifically, Mrs. Fidel testified that she sought Ms.
23 Walker's help to see if she would assist in getting Student to lighten her rigorous course
24 load. (*Id.*) Furthermore, she also testified that she informed Ms. Walker that Student
25 had attempted suicide, was subsequently hospitalized, and was taking psychotropic
26 medication. (*Id.*) Mrs. Fidel also sought Ms. Absher's help to reduce Student's course
27 load. (AR 406–08.)

28

1 Student began her junior year with an even more rigorous schedule. (AR 1085.)
2 Though she earned a 4.0 GPA for her first semester, she increased her alcohol
3 consumption from three days per week to daily as the year progressed, continuously
4 sipping vodka throughout the day. (*Id.*) Student was caught plagiarizing essays, stealing
5 money from a teacher, and engaging in sexually compromised situations on campus.
6 (AR 1085-87.) She refused to work in her AP Statistics class, and stopped associating
7 with her friends. (AR 464–65, 470–73, 1087.) Because of the number of class-period
8 absences, the school arranged a system with Mrs. Fidel to identify whether any excused
9 absences were actually authorized by her. (AR 1086.) The school also issued a progress
10 report in February 2007 indicating that Student was receiving a D- in AP Language
11 Composition, and another progress report in April 2007 indicating that she was
12 receiving an F in AP Statistics. (AR 87–88.) By the end of her junior year, Student
13 earned a 2.50 GPA. (AR 1086.)

14 On June 13, 2007, Student was admitted to a hospital after informing her parents
15 that she wanted to commit suicide by drinking Clorox. (AR 102–04, 1088.) Student
16 was diagnosed with: “bipolar I disorder, mixed phase, with psychosis”; generalized
17 anxiety disorder; and alcohol abuse. (AR 102, 104.) She was hospitalized in the
18 psychiatric unit until June 22, 2007 when she went to Provo Canyon School (“Provo”),
19 a residential treatment facility. (AR 1088.) On June 26, 2007, Parents’ educational
20 consultant Fred Marasco informed the District of Student’s admission to Provo, and
21 delivered a letter to the District stating, among other things, that Mrs. Fidel informed
22 Ms. Walker of Student’s 2006 suicide attempt and other behavioral problems. (AR
23 131–32, 1083, 1088.) On September 20, 2007, an Individualized Education Program
24 (IEP) team found Student eligible for special education under the emotional disturbance
25 category and placed her at Provo, where she remained until February 28, 2008. (AR
26 1088.)

27 On March 5, 2009, Parents filed a request for reimbursement in the California
28 Office of Administrative Hearing. (AR 1080.) On June 8, 2009, the ALJ issued the

1 decision and made the following determination with regard to the issue of whether the
2 District denied Student a FAPE from March 5, 2007 through September 20, 2007 by
3 failing to fulfil its child-find obligations in violation of the IDEA:

4 [T]he District had more than sufficient information within its possession
5 by mid-April 2007, to suspect that Student might have been eligible for
6 special education and related services under the category of ED
7 [Emotionally Disturbed]. Student had made a suicide attempt in the
8 preceding summer; was under the care of a psychologist and a psychiatrist;
9 was taking psychotropic medication; had been engaging in inappropriate
10 behavior (i.e., forging absence excuses, caught in compromising sexual
situations on campus, stealing from a teacher, and cheating); refused to
work in her math class, all of which resulted in falling grades. These
factors together should have led school authorities to suspect that Student
was undergoing an emotional disturbance and she should have been
referred for an evaluation to determine if she was eligible for special
education and related services under the category of ED.

11 (AR 1091.) Thereafter, the ALJ granted Parents' request for costs they incurred for
12 Student's nonpublic-school placement from June 23, 2007 through September 20, 2007,
13 and ordered the District to reimburse Parents the sum of \$24,693.97. (AR 1092.)

14 On July 1, 2010, a hearing was held regarding the review of the ALJ's decision.
15 On July 14, 2010, Magistrate Judge Bencivengo issued a Report recommending that this
16 Court affirm the ALJ's decision and order the District to reimburse Parents for costs
17 incurred for their daughter's nonpublic-school placement. The District filed objections
18 to the Report, and Parents filed a reply.

19 20 **II. LEGAL STANDARD**

21 A district court's duties concerning a magistrate judge's report and
22 recommendation and a respondent's objections thereto are set forth in Rule 72(b) of the
23 Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are
24 filed, the district court is not required to review the magistrate judge's report and
25 recommendation. See United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.
26 2003) (holding that 28 U.S.C. § 636(b)(1)(C) "makes it clear that the district judge
27 must review the magistrate judge's findings and recommendations *de novo* if *objection*
28 *is made*, but not otherwise") (emphasis in original); Schmidt v. Johnstone, 263 F. Supp.

1 2d 1219, 1226 (D. Ariz. 2003) (concluding that where no objections were filed, the
2 district court had no obligation to review the magistrate judge's report). This rule of law
3 is well established within the Ninth Circuit and this district. See Wang v. Masaitis, 416
4 F.3d 992, 1000 n.13 (9th Cir. 2005) ("Of course, de novo review of a R & R is *only*
5 required when an objection is made to the R & R.") (emphasis added) (citing Renya-
6 Tapia, 328 F.3d at 1121); Nelson v. Giurbino, 395 F. Supp. 2d 946, 949 (S.D. Cal.
7 2005) (Lorenz, J.) (adopting report without review because neither party filed objections
8 to the report despite the opportunity to do so, "accordingly, the Court will adopt the
9 Report and Recommendation in its entirety."); see also Nichols v. Logan, 355 F. Supp.
10 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

11 In contrast, the duties of a district court in connection with a magistrate judge's
12 report and recommendation are quite different when an objection has been filed. These
13 duties are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C.
14 § 636(b)(1). Specifically, the district court "must make a *de novo* determination of those
15 portions of the report . . . to which objection is made," and "may accept, reject, or
16 modify, in whole or in part, the findings or recommendations made by the magistrate."
17 28 U.S.C. § 636(b)(1)(c); see also United States v. Raddatz, 447 U.S. 667, 676 (1980);
18 United States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989).

19 In evaluating a complaint under the IDEA, the district court "shall receive the
20 record of the [state] administrative proceedings; shall hear additional evidence at the
21 request of a party; and basing its decision on the preponderance of the evidence, shall
22 grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C).
23 The Ninth Circuit has interpreted this as calling for de novo review. Union Sch. Dist.
24 v. Smith, 15 F.3d 1519, 1524 (9th Cir. 1994). However, it has cautioned that this court
25 must give deference to the state hearing officer's findings, particularly when they are
26 thorough and careful, or based on credibility determinations of live witnesses. Id.;
27 Amanda J. ex rel. Annette J. v. Clark Cnty. Sch. Dist., 267 F.3d 887, 889 (9th Cir.
28 2001). This court also "must give 'due weight' to judgments of education policy when

1 [we] review state hearings [C]ourts should not substitute their own notions of
2 sound educational policy for those of the school authorities which they review.” Seattle
3 Sch. Dist., No. 1 v. B.S., 82 F.3d 1493, 1499 (9th Cir. 1996) (citing Union Sch. Dist.,
4 15 F.3d at 1524) (quotations omitted).

5 The Ninth Circuit has also recognized that the procedure under the IDEA is “not
6 a true summary judgment procedure,” but is “essentially . . . a bench trial based on a
7 stipulated record.” Ojai Unified Sch. Dist., 4 F.3d 1467, 1472 (9th Cir. 1993).
8 Specifically, they have explained that “[i]t is hard to see what else the district court
9 could do as a practical matter under the statute except read the administrative record,
10 consider the new evidence, and make an independent judgment based on a
11 preponderance of the evidence and giving due weight to the hearing officer’s
12 determinations.” Capistrano Unified Sch. Dist. v. Wartenberg, 59 F.3d 884, 892 (9th
13 Cir. 1995). “Even though [this method of review] does not fit well into any pigeonhole
14 of the Federal Rules of Civil Procedure . . . [it] appears to be what Congress intended
15 under the Act.” Id. While the petitioning party bears the burden of proof at the
16 administrative level, the party challenging an administrative decision in federal district
17 court has the burden of persuasion on his or her claim. Schaffer v. Weast, 546 U.S. 49,
18 57 (2005); Clyde K. v. Puyallup Sch. Dist. No. 3, 35 F.3d 1396, 1399 (9th Cir. 1994)
19 (overruled on other grounds).

20 21 **III. DISCUSSION**

22 **A. ALJ’s Credibility Determination Regarding Ms. Walker’s Testimony** 23 **Deserves Substantial Deference.**

24 Under the IDEA, federal courts must give deference to state hearing officer
25 findings, particularly when they are carefully detailed or based on credibility
26 determinations of live witnesses. Amanda J., 267 F.3d at 889; Seattle Sch. Dist. No. 1,
27 82 F.3d at 1499. Here, the ALJ found that:

28

1 Walker was notified by Mother [Mrs. Fidel] and aware of Student's 2006
2 attempted suicide attempt, her subsequent treatment, and her being on
3 psychotropic medication. In making this determination, the ALJ [found]
4 that Walker's testimony is not credible. Walker appeared nervous
5 throughout her testimony and her scant recollection of the conversation
6 with Mother seemed to demonstrate that she was being evasive. Her
7 attempt to downplay the extent of her relationship with Student was
8 impeached by her own admission that Mother called her because she did
9 have a close relationship with Student. It is also unreasonable to believe
10 that a parent, who is very concerned with the welfare of her child who had
11 recently attempted suicide, would seek assistance from a school counselor
12 and not inform the counselor for the basis of her concerns. The District
13 never attempted to rebut the contents of the Marasco letter at the IEP
14 meeting. Walker did not refute Student's testimony that shortly
15 thereafter, Student told Walker of her experiences including her
16 hospitalization, subsequent and ongoing treatment and her use of
17 psychotropic medication. Thus, Walker is charged with knowledge of
18 Student's psychological problems, which should have alerted her that
19 Student was experiencing emotional difficulties.

20 (AR 1084.) The ALJ carefully explained in detail why he did not find Ms. Walker to
21 be credible during her live testimony—including her nervous appearance throughout
22 her testimony, her evasiveness, and her selective memory of some conversations but not
23 others. (*See id.*) Therefore, the ALJ's finding must be given substantial deference.

24 The District requests that the Court not give deference to the ALJ's finding
25 because it contends that a review of testimony beyond Ms. Walker's and Mrs. Fidel's
26 does not support the ALJ's finding that Ms. Walker was not credible and further does
27 not support the finding that the District was aware of Student's 2006 suicide attempt.
28 However, there are only two witnesses who can speak to the issue of whether Ms.
Walker was told about the 2006 suicide attempt: Ms. Walker and Mrs. Fidel. The ALJ
believed Mrs. Fidel. In making that determination, the ALJ presented a thorough and
detailed explanation to support his finding. (*See AR 1084.*)

The District also contends that the Court should review the record as a whole
because the ALJ relied on the thoughts, beliefs and actions of other individuals in
making his credibility determination. (Objection 15:13–17, 17:16-18.) However, even
considering the record as a whole, the fact that other District officials or staff may have
not been aware of the 2006 suicide attempt or thought that Student was well remains
irrelevant to whether Mrs. Fidel told Ms. Walker about the suicide attempt in August

1 2006. Though the ALJ references the Marasco letter in his credibility determination,
2 the letter stated that Mrs. Fidel informed Ms. Walker about Student's 2006 suicide
3 attempt—that is, though the letter was not written and delivered by Mrs. Fidel, its
4 contents are clearly an expression of her thoughts, beliefs and actions. Therefore, the
5 ALJ thoroughly and correctly considered the thoughts, beliefs and actions of the two
6 pertinent individuals—Mrs. Fidel and Ms. Walker—in making his credibility
7 determination.

8 Accordingly, the Court defers to the ALJ's credibility determination. Further, the
9 Court finds that in August 2006, Ms. Walker was notified of Student's 2006 suicide
10 attempt, her subsequent hospitalization, and her psychotropic medication treatment.
11

12 **B. The District Had Sufficient Evidence to Trigger Its Child-Find**
13 **Obligation by Mid-April 2007.**

14 The IDEA was enacted “to ensure that all children with disabilities have available
15 to them a free appropriate public education that emphasizes special education and
16 related services designed to meet their unique needs and prepare them for employment
17 and independent living.” 20 U.S.C. § 1400(d)(1)(A); Ravenswood City Sch. Dist. v.
18 J.S., No. C 10-03950 SBA, 2010 WL 4807061, at *1 (N.D. Cal. Nov. 18, 2010). It
19 requires participating states to educate a wide spectrum of disabled children, “from the
20 marginally hearing impaired to the profoundly retarded and palsied.” Bd. of Educ. of
21 Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 202
22 (1982). The benefits obtained by children at one end of the spectrum will differ
23 dramatically from those obtainable by children at the other, with infinite variations in
24 between. Id.

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1 To meet this goal, all public education agencies are required to have in effect
2 policies and procedures to ensure that:

3 All children with disabilities residing in the State, including children who
4 are homeless or wards of the state and children with disabilities attending
5 private schools, regardless of the severity of their disability, and who are in
6 need of special education and related services, are identified, located, and
7 evaluated and a practical method is developed and implemented to
8 determine which children with disabilities are currently receiving needed
9 special education and related services.

10 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a). This mandate is known as the
11 “child find” obligation—an affirmative obligation of every public school system to
12 identify students who might be disabled and evaluate those students to determine
13 whether they are indeed eligible. See 20 U.S.C. § 1412(a)(3)(A); W.H. ex rel B.H. v.
14 Clovis Unified Sch. Dist., No. CV F 08-0374, 2009 WL 1605356, at *6 (E.D. Cal. June
15 8, 2009) (“The IDEA and California state law impose upon each school district the duty
16 actively and systematically to identify, locate, and assess all children with disabilities or
17 exceptional needs who are in need of special education and related services.”).

18 The child-find obligation extends to all children *suspected* of having a
19 disability—not merely to those students who are ultimately determined to be
20 disabled—even though they are advancing from grade to grade. 34 C.F.R. §
21 300.111(c)(1). This statutory mandate is clear. Moreover, the threshold for suspecting
22 that a child has a disability is relatively low. Cari Rae S., 158 F. Supp. 2d at 1195; see
23 Nesbit v. Dist. of Columbia, No. 01-2429 (GK), 2003 U.S. Dist. LEXIS 26306, at *21
24 (D.D.C. Mar. 31, 2003). Courts have held that as soon as a student is identified as a
25 *potential* candidate, the state or local educational agency (“LEA”) has the duty to locate
26 that child and complete the evaluation process. E.M. ex rel E.M. v. Pajaro Valley
27 Unified Sch. Dist., No. C 06-4694 JF, 2009 WL 2766704, at *9 (N.D. Cal. Aug. 27,
28 2009); W.H., 2009 WL 1605356, at *5. That is, “[a] district’s child find obligation
toward a specific student is triggered when there is a reason to suspect a disability and
that special education services may be needed to address that disability.” E.M., 2009
WL 2766704, at *9 (internal quotation marks omitted) (quoting W.H., 2009 WL

1 1605356, at *5). Failure to locate and evaluate a potentially disabled child constitutes
2 a denial of FAPE. See R.B., ex rel F.B. v. Napa Valley Unified Sch. Dist., 496 F.3d 932,
3 938 (9th Cir. 2007); Dep't of Educ., State of Hawaii v. Cari Rae S., 158 F. Supp. 2d
4 1190, 1194 (D. Haw. 2001).

5 In Nesbit, a prospective student's parent came to a school in the District of
6 Columbia Public Schools ("DCPS") and asked whether his son could be tested for
7 Attention Deficit Hyperactivity Disorder. 2003 U.S. Dist. LEXIS 26306, at *4-5. The
8 school referred the parent to an outside agency to obtain testing. The student never
9 enrolled in DCPS's school, but instead enrolled in a public charter school. The court
10 held that DCPS violated the IDEA because it "failed to take any steps to evaluate [the
11 student] after he was identified as potentially in need of special education services"
12 during the parent's first visit to the school. Id. at *21. The court noted that DCPS
13 made no attempt to locate the student or evaluate him after he was identified. Id. The
14 court concluded that "[e]ven though a parent may help a school district satisfy the
15 IDEA's requirement that it identify children in need of services, the school district is not
16 relieved of its requirement to further locate and evaluate those children." Id. at *21-22
17 (citing Wolfe v. Taconic-Hills Cent. Sch. Dist., 167 F. Supp. 2d 530 (N.D.N.Y. 2001)).
18 Ultimately, the mere inquiry from the parent of an unenrolled student triggered the
19 child-find obligation. See id.

20 Here, Parents presented the District with more than a mere inquiry. In August
21 2006, Mrs. Fidel notified the District through Ms. Walker that Student attempted
22 suicide, was subsequently hospitalized, and was taking psychotropic medication.
23 Furthermore, the District observed many other events that should have given it reason
24 to suspect that Student had a disability and that special education services may be
25 needed to address that disability. For example, Mrs. Fidel also contacted Ms. Absher
26 prior to the 2006-2007 school year to have Student's course load reduced. (AR
27 406-08.) Additionally, during the 2006-2007 school year, Student experienced an
28 unusual number of absences that led the school's attendance clerk to arrange a means

1 of verifying that she was communicating with Mrs. Fidel and not Student. (AR 98–101,
2 827–29.) Teachers caught Student cheating and stealing. (AR 793–95, 440–43.)
3 Student’s grades also rapidly declined. (AR 87–88, 176.) In February 2007, she
4 received a progress report indicating she was receiving a D- in AP Language
5 Composition, and in April 2007, she received a “DF letter” indicating that she was
6 receiving an F in AP Statistics. (*Id.*) These observations were all evident to the District
7 by mid-April 2007. Thus, by mid-April 2007, the District had sufficient information to
8 *suspect* that Student had a disability and, consequently, trigger its child-find obligation.

9 The District argues that the child-find obligation arose in June 2007 after it had
10 received additional information—namely, Student’s report card for the second semester
11 of her junior year, the Marasco letter (AR 131–32), and Parents’ report that Student
12 had been hospitalized a second time for suicidal ideation. (*Objection* 14:7–17.)
13 However, the substance of this additional information was already known to the
14 District. Student’s report card showed that her GPA had fallen from a 4.0 to 2.5 in the
15 course of one semester, but the District’s issuance of Student’s progress reports
16 demonstrates its prior knowledge of her academic struggles. Also, the bulk of the
17 Marasco letter reiterated the conversation in August 2006 when Mrs. Fidel informed
18 Ms. Walker that Student had attempted suicide, was subsequently hospitalized, and was
19 taking psychotropic medication.³ Again, this was not new information. Finally, though
20 Student’s hospitalization for suicidal ideation in June 2007 was new information, the
21 District already had knowledge of Student’s hospitalization in July 2006 after she
22 attempted suicide by ingesting over-the-counter medication. As such, knowledge of
23 Student’s struggle with attempted suicide was not new. Thus, none of the additional
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26 ³ Even if the Marasco letter produced new information for the District, the District
27 cannot rely on the letter because under the child-find legislation, parents have no obligation
28 to identify, locate or evaluate their child’s disability. Hicks v. Purchase Line Sch. Dist., 251
F. Supp. 2d 1250, 1253 (W.D. Pa. 2003).

1 information received by June 2007 provided the District with any new information that
2 was not already known by mid-April 2007.

3 Therefore, the District had sufficient evidence to suspect that Student had a
4 disability by mid-April 2007. Accordingly, the Court affirms the ALJ's determination
5 that the District's child-find obligation triggered by mid-April 2007 and that there was
6 a child-find violation by mid-April 2007.

7
8 **C. The District Possessed Sufficient Evidence to Suspect that Student was**
9 **Undergoing an Emotional Disturbance and Should Have Been Referred**
10 **for an Evaluation.**

11 The IDEA defines "emotional disturbance" as:

12 [A] condition exhibiting one or more of the following characteristics over
13 a long period of time and to a marked degree that adversely affects a child's
14 educational performance: (A) An inability to learn that cannot be
15 explained by intellectual, sensory, or health factors. (B) An inability to
16 build or maintain satisfactory interpersonal relationships with peers and
teachers. (C) Inappropriate types of behavior or feelings under normal
circumstances. (D) A general pervasive mood of unhappiness or
depression. (E) A tendency to develop physical symptoms or fears
associated with personal or school problems.

17 34 C.F.R. § 300.8(c)(4)(i); see also Cal. Code Regs. tit. 5, § 3030(i).

18 Student's suicide attempt in July 2006 and subsequent hospitalization clearly
19 demonstrate "inappropriate behavior" to a marked degree. See N.G. v. Dist. of
20 Columbia, 556 F. Supp. 2d 11, 27 (D.D.C. 2008) ("It should go without saying that
21 attempting suicide is an 'inappropriate behavior.'"). Student's second hospitalization for
22 suicidal ideation in June 2007 as well as her behavior at school and her rapidly declining
23 grades demonstrate the persistence of the inappropriate behavior. In the span of about
24 nine months, Student's mental state worsened from "major depressive disorder, single
25 episode, severe, with recent parasuicide" to "bipolar I disorder, mixed phase, with
26 psychosis." (AR 82, 102.) Moreover, the only expert to testify at the administrative
27 hearing opined that, even absent the June 2007 hospitalization, Student would have
28 been eligible for special education under the criteria of emotionally disturbed. (AR

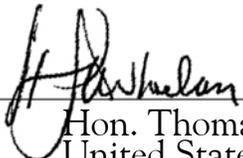
1 564–66.) Thus, the District had all the essential information by mid-April 2007 that
2 should have led it to *suspect* that Student was undergoing an emotional disturbance and
3 should have been evaluated to determine if she was eligible for special education and
4 related services under the emotional disturbance category.⁴

5
6 **IV. CONCLUSION AND ORDER**

7 In light of the foregoing, the Court **ADOPTS** the Report in its entirety (Doc. 9),
8 **OVERRULES** the District’s objections (Doc. 11), and **AFFIRMS** the ALJ’s decision.

9
10 **IT IS SO ORDERED.**

11 DATED: January 4, 2011

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15 Hon. Thomas J. Whelan
16 United States District Judge
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24 _____
25 ⁴The Court recognizes the District’s objection to the Report’s finding that Student was
26 eligible for special education. (*Objection* 20:28–21:3; *Report* 20:28–21:2.) However, Student’s
27 eligibility is not an issue before the Court. Rather, the issue is whether the District had reason
28 to *suspect* Student’s eligibility by mid-April 2007. Thus, though the Report may have misstated
this detail, its ultimate recommendation that there is no basis to overturn the ALJ’s decision
is correct.