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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

T.P. A MINOR, BY HER )  
GUARDIAN AD LITEM, LESAH )  
MUTSCHELLER AND LESAH )  
MUTSCHELLER, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
TEMECULA VALLEY UNIFIED )  
SCHOOL DISTRICT, )  
 )  
Defendant.

Case No. EDCV 12-00177 VAP  
(SPx)

**ORDER DENYING PLAINTIFF'S  
REQUEST FOR RELIEF**

**[Motion filed on October 8,  
2012]**

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This case concerns the appropriate educational placement of minor student T.P. ("Student") under the Individuals with Disabilities in Education Act ("IDEA"). Plaintiffs' Request for Relief from the decision of the Administrative Law Judge ("ALJ"), finding that Defendant Temecula Valley Unified School District ("the District") did not violate the IDEA by offering to place Student in a nonresidential day school for the 2010-2011 school year, came before the Court for hearing on January 7, 2013. After reviewing and considering all papers filed

1 in support of, and in opposition to, the Motion, as well  
2 as the arguments advanced by counsel at the hearing, the  
3 Court DENIES Plaintiff's Request.

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## I. BACKGROUND

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### A. Undisputed Facts

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The following facts are taken from the administrative  
record, and are undisputed unless noted.

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Student is a minor who resides within Defendant  
Temecula Valley Unified School District ("the District");  
Student has been diagnosed as "emotionally disturbed,"  
and receives special education services. (Admin. R.  
("A.R.") (Doc. No. 23) at 1373-75.)

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During the 2009-2010 school year, Student's  
individual education plan ("IEP") team determined that  
her behavioral problems were too severe to allow her  
educational needs to be met in a general education public  
school classroom. (A.R. 1087.) The IEP team agreed to  
place Student in a day program at Oak Grove Institute  
("Oak Grove"), a non-public school that specializes in  
educating students with emotional disturbance. (A.R.  
1087.) Student attended Oak Grove for approximately two  
months in March and April 2010. (A.R. 1087.) The  
parties disagree over whether Student was successful at  
Oak Grove. (A.R. 1089.)

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On April 30, 2010, Student's mother placed Student in a locked residential facility in Utah called Provo Canyon, where she attended until June 2011. (A.R. 1092; Pls.' Req. for Relief (Doc. No. 19) at 4.) In June 2011, Student's mother placed Student at the Summit Preparatory School ("Summit"), a slightly less restrictive residential placement than Provo Canyon, where she remained until July 2012. (Pls.' Req. for Relief at 4.) Student's IEP team held a meeting on May 26, 2011, to determine the District's offer of placement for the 2011-2012 school year. The District offered to send Student back to the day program at Oak Grove, but Student believed that Student required a residential placement. (A.R. 1101.)

**B. Administrative Hearing**

An Administrative Law Judge ("ALJ") held a hearing on October 10-12, 2011 to determine whether the District had complied with the requirements of the IDEA in offering to place Student in the day program at Oak Grove for the 2011-2012 school year. (A.R. 1085.)

At the administrative hearing, Student introduced the testimony of witnesses Lesah Mutscheller, Student's mother (A.R. 816); Dr. Lane Smith, who had been Student's treating psychiatrist for over a year at Provo Canyon

1 (A.R. 733-34); and licensed educational psychologist Dr.  
2 Sara Frampton. Dr. Frampton was a consultant who had  
3 been involved with Student for approximately two years  
4 before the administrative hearing. (A.R. 197.) Dr.  
5 Frampton had tested Student, reviewed her records,  
6 interviewed family members, and attended IEP meetings for  
7 Student in the past. (A.R. 199-200.) She was familiar  
8 with Oak Grove as well as other treatment options in the  
9 area, and she attended the May 26, 2011 IEP meeting.  
10 (A.R. 199-203.)

11  
12 Student also introduced evidence of the opinion of  
13 Oak Grove Director of Education Dr. Michael Brown,  
14 through the testimony of witnesses Dr. Frampton and  
15 Jeffery Janis, the District's Assistant Director of  
16 Special Education. (A.R. 1091.)

17  
18 The District introduced the testimony of Janis (A.R.  
19 104); Mutscheller (A.R. 24); Breck Smith, a special  
20 education program specialist for the District (A.R. 73);  
21 Claire Priester, a clinical therapist with Riverside  
22 County Mental Health who evaluated Student in December  
23 2010 (A.R. 306-20); Dianne Radican, Mental Health Service  
24 Supervisor with Riverside County Mental Health who  
25 reviewed student's records (A.R. 613-28); and Michelle  
26 Sebastian, a special education teacher at Oak Grove who

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1 served as Student's teacher and case manager in Spring  
2 2010 (A.R. 509-11).

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4 The ALJ issued a decision on November 15, 2011,  
5 finding that the District's offer of placement was  
6 appropriate and did not violate the IDEA. (A.R. 1114.)

7

8 **C. Proceedings in This Court**

9 On February 6, 2012, Plaintiffs filed a Complaint in  
10 this Court (Doc. No. 1), seeking (1) a determination that  
11 the District denied Student a FAPE by offering to place  
12 Student in Oak Grove for the 2011-2012 school year; (2)  
13 reimbursement of the costs of sending Student to Provo  
14 Canyon for the 2011-2012 school year; and (3) attorney's  
15 fees and costs.

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17 Student filed a Request for Relief (Doc. No. 19) on  
18 October 8, 2012, requesting the Court to enter judgment  
19 in her favor based on the administrative record. On the  
20 same date, Student filed a Request to Submit Additional  
21 Evidence (Doc. No. 20), seeking consideration of the  
22 declaration of three witnesses regarding Student's  
23 progress after the May 26, 2011 IEP Meeting; the ALJ had  
24 ruled that Student's post-IEP-Meeting progress was  
25 irrelevant. The Court granted Student's Motion in part  
26 and accepted the declarations of Emily Krock ("Krock

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1 Declaration") and Victor C. Houser ("Houser Declaration")  
2 (Doc. No. 35).

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4 The District filed an Opposition to Student's Request  
5 for Relief on October 24, 2012 (Doc. No. 28). The  
6 District also submitted the Declaration of Dr. Sandi  
7 Fischer ("Fischer Declaration"), in rebuttal to the Krock  
8 and Houser Declarations (Doc. No. 40).

9

10 Student filed a Reply on November 4, 2012 (Doc. No.  
11 31). At the Court's prompting, the District filed a  
12 Supplemental Brief addressing the impact of the  
13 additional evidence on December 16, 2012 (Doc. No. 41),  
14 and Student did the same on December 17, 2012 (Doc. No.  
15 42).

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## II. LEGAL STANDARDS

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### **A. Free Appropriate Public Education under IDEA**

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The Individuals with Disabilities Education Act, 20  
U.S.C. § 1400 et seq., requires states to provide  
disabled students with a "free appropriate public  
education" ("FAPE"). In Board of Education v. Rowley,  
458 U.S. 176 (1982), the Supreme Court set forth the  
following standard for determining whether a school  
district has provided a FAPE:

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Insofar as a State is required to provide a  
handicapped child with a "free appropriate  
public education," we hold that it satisfies

1 this requirement by providing personalized  
2 instruction with sufficient support services to  
3 permit the child to benefit educationally from  
4 that instruction. Such instruction and services  
5 must be provided at public expense, must meet  
6 the State's educational standards, must  
7 approximate the grade levels used in the State's  
8 regular education, and must comport with the  
9 child's IEP. In addition, the IEP, and therefore  
10 the personalized instruction, should be  
11 formulated in accordance with the requirements  
12 of the Act and, if the child is being educated  
13 in the regular classrooms of the public  
14 education system, should be reasonably  
15 calculated to enable the child to achieve  
16 passing marks and advance from grade to grade.

17 Id. at 203–04; see J.L. v. Mercer Island Sch. Dist., 592  
18 F.3d 938, 951 (9th Cir. 2009) (holding that Rowley  
19 continues to set forth the standard for a FAPE).

20 As the IDEA provides only a “basic floor of  
21 opportunity,” a FAPE “does not mean the absolutely best  
22 of ‘potential-maximizing’ education for the individual  
23 child.” J.W. ex rel. J.E.W. v. Fresno Unified Sch.  
24 Dist., 626 F.3d 431, 439 (9th Cir. 2010) (internal  
25 quotation mark omitted). A school district does not  
26 satisfy the IDEA's requirements, however, by providing  
27 only a trivial level of educational benefit. See id.  
28 (citing Amanda J. ex. rel. Annette J. v. Clark Cnty. Sch.  
Dist., 267 F.3d 877, 890 (9th Cir. 2001)).

1 Under the "snapshot rule," courts do not rely on  
2 hindsight to determine whether a district's offer of  
3 placement constituted a FAPE; instead, courts consider  
4 whether the offer of services was reasonably calculated  
5 to provide the student with meaningful educational  
6 benefit at the time it was made. See Adams v. State of  
7 Oregon, 195 F.3d 1141, 1149 (9th Cir. 1999).

8

9 **B. Standard of Review of Administrative Decision**

10 Under the IDEA, federal courts may receive evidence  
11 outside the administrative record and accord the  
12 additional evidence equal weight. Ms. S. ex rel. G. v.  
13 Vashon Island Sch. Dist., 337 F.3d 1115, 1126 (9th Cir.  
14 2003), superseded on other grounds by 20 U.S.C.  
15 § 1414(d)(1)(B). Accordingly, district courts accord  
16 "less deference than is normally the case to the  
17 administrative law judge's findings of fact." Id.  
18 (citing Amanda J. ex rel. Annette J. v. Clark Cnty. Sch.  
19 Dist., 267 F.3d 877, 887 (9th Cir. 2001)). Complete de  
20 novo review is inappropriate; instead, the court accords  
21 "due weight" to the ALJ's factual findings and reviews  
22 legal questions, including whether a student's placement  
23 under the IDEA constitutes a "free and appropriate public  
24 education," de novo. Id. at 1126-27. The amount of "due  
25 weight" to be given is within the court's discretion.  
26 Id. at 1126.

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**III. DISCUSSION**

**A. Procedural Violations**

At the Administrative Hearing, Student asserted that the District violated the procedural requirements of the IDEA by (1) failing to reassess Student after January 2011; (2) failing to draft an assessment report; (3) failing to delineate Riverside County Mental Health services with specificity; and (4) failing to include mental health goals related to Riverside County Mental Health services. (A.R. 1086). In her Complaint before this Court, Student also asserted that her parents were denied meaningful participation in the IEP process through which the placement decision was made. (See Compl. ¶ 10.)

Student does not address any of these purported procedural violations in her Request for Relief; accordingly, these issues are not properly before the Court.

**B. Appropriateness of Oak Grove Placement Offer**

**1. Student's Progress at Oak Grove in 2010**

The ALJ found that "Oak Grove was an appropriate placement for Student as of April 2010. The placement was reasonably calculated to provide Student with educational benefit and did, in fact, provide such benefit. Student attended school regularly and her

1 grades improved dramatically. Any behavioral issues in  
2 her home life were not affecting her school life at that  
3 time." (A.R. 1111.)

4  
5 The evidence does not support the ALJ's conclusion.  
6 Although Student had a perfect attendance record during  
7 her first month at Oak Grove (A.R. 1088), experts from  
8 both sides admit that a "honeymoon period" is customary  
9 (A.R. 559, 1102). Student's behavioral problems  
10 increased sharply after spring break, with Student  
11 walking out of class nine times in April. (A.R. 1088.)  
12 On one occasion, Student left class for one to two hours,  
13 and Oak Grove staff were unsure of her whereabouts for at  
14 least ten to fifteen minutes. (A.R. 1089.) Student was  
15 out of her seat frequently and required prompting to  
16 complete her work. (A.R. 1088.) She dressed  
17 provocatively and engaged in "inappropriate massaging and  
18 touching" with male students during the school day.  
19 (A.R. 1088.)

20  
21 The ALJ's determination that Student's "grades  
22 increased significantly" (A.R. 1088) is likewise  
23 unsupported by the evidence. After two months, Student  
24 was passing only one of her core academic classes  
25 (English), and had too many missing assignments in World  
26 Geography, Algebra, and Physical Science to receive a  
27 letter grade for those subjects. (A.R. 1088) Student

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1 was getting a "B" in Nutrition and "C"s in Life Skills  
2 and Physical Education. (A.R. 1088) While Student's  
3 grades may have been higher than they were at the public  
4 high school, the evidence does not show that Student was  
5 doing well academically.

6  
7 In April 2010, Student's in-school behavior was on a  
8 downward slope and Student was not passing most of her  
9 core academic subjects. On the other hand, none of her  
10 instances of misbehavior were particularly severe, and  
11 she had not attended Oak Grove long enough to have  
12 completed an extensive number of lessons, assignments, or  
13 assessments that would have affected her grades. Student  
14 simply did not attend Oak Grove for a sufficient period  
15 in 2010 to draw any conclusions about whether she was  
16 making progress on her goals and benefitting  
17 educationally. (Cf. A.R. 559, 1090-91 (Sebastian,  
18 Student's teacher at Oak Grove, admitted that "two months  
19 was a short time to get a complete picture of how a child  
20 would react to a placement.")

21  
22 **2. Appropriateness of Oak Grove in May 2011**

23 The ALJ found that "the weight of the evidence  
24 supports the District's position that Oak Grove would  
25 have been appropriate to meet Student's needs in May  
26 2011. Sebastian and Priester were persuasive in their  
27 testimony that Oak Grove staff could handle the types of  
28

1 behaviors Student exhibited at Provo, even her worst  
2 behaviors." (A.R. 1112.)

3  
4 The ALJ seems to have determined that Oak Grove was  
5 appropriate in May 2011 because Student had been  
6 successful there during a two-month period in March and  
7 April 2010, and Student's conduct at Provo Canyon from  
8 2010–2011 was not severe enough to require a change in  
9 placement. (A.R. 1111–12.) As explained above, there is  
10 ample evidence that Student was not as successful at Oak  
11 Grove in April 2010 as it seemed. As a result, Student's  
12 previous progress at Oak Grove did not necessarily  
13 indicate that Oak Grove would be an appropriate placement  
14 for 2011–2012.

15  
16 Having found the evidence inconclusive as to whether  
17 Oak Grove was appropriate in April 2010, the question  
18 before the Court is whether Oak Grove was appropriate in  
19 May 2011, based on Student's progress and challenges  
20 overall and making no assumptions about whether Student  
21 would have been successful at Oak Grove in 2010.

22  
23 The ALJ's finding that Oak Grove was appropriate in  
24 May 2011 is persuasive. While at Provo Canyon in 2010 to  
25 2011, Student's out-of-class conduct deteriorated.  
26 Student began to engage in self-harm by scratching her  
27 skin deep enough to leave scabs, and she also began to

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1 experience suicidal ideation and to make suicidal  
2 gestures. (A.R. 1092.) All mental health professionals  
3 who testified at the administrative hearing agreed,  
4 however, that Student's suicidal gestures were for  
5 attention, and were not true attempts at suicide. (A.R.  
6 1112.) Student acted aggressively toward staff and peers  
7 outside the classroom on at least 5 instances, and in  
8 February 2011, she was diagnosed with an eating disorder.  
9 (A.R. 1093.) In addition, Student engaged in  
10 inappropriate sexual activities with her peers and  
11 attempted to pass her medication to a peer. (A.R. 1093.)  
12  
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14 In class, while Student continued to disobey  
15 instructions at times, require prompting to complete her  
16 assignments, and exhibit resistance to turning in  
17 assignments, her grades were "fairly good." (A.R. 1093.)  
18 She did not engage in self-harm or suicidal gestures in  
19 class. (A.R. 1093)  
20

21 Student's in-class behaviors were similar to those  
22 she exhibited while at Oak Grove in April 2010, and no  
23 more severe. Sebastian, Priester, and Radican all  
24 testified that the Oak Grove staff had experience dealing  
25 with suicidal ideation and gestures, and truancy, as well  
26 as incidents of leaving class, working off-task, and  
27 disrupting the class. (A.R. 649, 1103.) Thus, ample  
28

1 evidence supports the ALJ's determination that it was  
2 reasonable for the District to conclude Oak Grove was  
3 appropriate to meet Student's needs in May 2011.

4

5 **3. Whether Student's Out-of-Class Conduct Required**  
6 **Residential Placement**

7 Student argues that a placement in the day program at  
8 Oak Grove was insufficient to meet her needs because she  
9 needed a residential placement. As explained above, the  
10 types of behaviors Student was exhibiting in school that  
11 were inhibiting her educational progress were behaviors  
12 that Oak Grove was reasonably equipped to handle.

13 Student argues that, in addition to those behaviors,  
14 Student needed a residential facility because she had no  
15 supervision at home to ensure that she did her homework  
16 and to prevent her suicidal gestures, and no  
17 transportation to her therapy sessions. (Pls.' Req. for  
18 Relief at 17, 19.) Student supports her argument with  
19 the testimony of Dr. Lane Smith, who opined that it would  
20 be not be ideal for Student to step down to a day program  
21 given her level of progress in May 2011. (A.R. 764.)

22

23 It may well have been true that Student required  
24 full-time supervision to make progress with her mental  
25 illness, and that, had she returned to Oak Grove, she  
26 would have resumed negative and potentially dangerous  
27 social and sexual behaviors when she was not in school.

28

1 Those concerns are not, however, the type of educational  
2 issues that require the district to fund a residential  
3 facility.

4  
5 In determining whether the school district must be  
6 responsible for a residential placement, the "analysis  
7 must focus on whether [Student's] placement may be  
8 considered necessary for educational purposes, or whether  
9 the placement is a response to medical, social, or  
10 emotional problems that is necessary quite apart from the  
11 learning process." Clovis Unified Sch. Dist. v. Cal.  
12 Office of Admin. Hearings, 903 F.2d 635, 643 (9th Cir.  
13 1990).

14  
15 In Clovis, the parties agreed that a seriously  
16 emotionally disturbed student could not benefit from her  
17 education without a residential placement, but the  
18 district argued that it was not responsible for funding  
19 placement at a psychiatric hospital because the placement  
20 was a response to medical needs rather than educational  
21 ones. Id. at 641-42. The Ninth Circuit held that the  
22 district was not responsible for the cost of room and  
23 board at the psychiatric hospital because those services  
24 were medically rather than educationally related. Id. at  
25 647. The court came to this conclusion in part because  
26 the student spent most of her time at the facility in  
27 therapy with only one to two hours of schooling, and the  
28

1 actual schooling was provided by tutors and teachers sent  
2 from the district rather than by staff at the facility.  
3 Id. at 646.

4  
5 In County of San Diego v. Cal. Special Education  
6 Hearing Office, 93 F.3d 1458 (9th Cir. 1996), in  
7 contrast, the Ninth Circuit held that the district was  
8 responsible for the cost of a residential treatment  
9 facility for a student with serious emotional disturbance  
10 and learning disabilities whose out-of-school violent  
11 outbursts were precipitated by frustration with her  
12 homework assignments. Id. at 1463. The court noted as  
13 part of its reasoning that the student's primary problems  
14 were directly related to education. Id.

15  
16 Unlike County of San Diego, there is no evidence here  
17 that Student's disruptive behaviors outside the classroom  
18 were related to school or educational issues. To the  
19 extent Student needed residential care to protect her  
20 from suicidal gestures outside of school, force her to  
21 attend therapy outside of school, and prevent her from  
22 engaging in underage drinking, sexual misconduct, and  
23 other misbehavior outside of school, Student's need was  
24 for medical reasons unrelated to her education. The  
25 district was not responsible for curing Student's  
26 emotional disturbance, or any psychological problems that  
27 were causing it, any more than the district would be

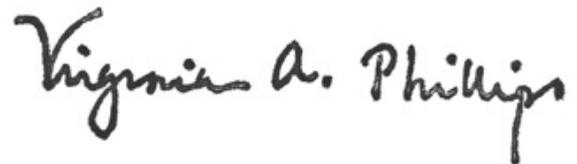
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1 responsible for curing a student's deafness. Cf. Clovis  
2 903 F.2d at 643. The District was responsible for  
3 providing Student with an education to which she could  
4 gain access, given her unique needs. Thus, to the extent  
5 the district was required to provide therapy to Student,  
6 that requirement extended only to therapy directed at  
7 helping Student derive benefit from her education.

8  
9 The District's offer of placement in the day program  
10 at Oak Grove was designed to meet Student's unique needs  
11 and reasonably calculated to provide Student with  
12 educational benefit. To the extent Student needed  
13 residential placement in a facility like Provo Canyon for  
14 purposes unrelated the learning process, the IDEA did not  
15 require the District to fund such a program.  
16 Accordingly, Plaintiffs' Request for Relief is DENIED.

17  
18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court DENIES  
20 Plaintiffs' Request for Relief.

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24 Dated: January 11, 2013

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VIRGINIA A. PHILLIPS  
26 United States District Judge  
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