

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ORANGE COUNTY HEALTH CARE)
AGENCY,)

Plaintiff,)

v.)

COLLEEN DODGE, et al,)

Defendants.)

COLLEEN DODGE, et al,)

Counter-Plaintiffs,)

v.)

ORANGE COUNTY HEALTH CARE)
AGENCY,)

Counter-Defendant.)

CASE NO. SACV 10-1689AG (MLGx)

ORDER AFFIRMING
ADMINISTRATIVE LAW
JUDGE'S DECISION

INTRODUCTION

This case raises the question of whether minor student L.M. (“Student” or “Daughter”), the daughter of Defendants/Counter-Plaintiffs Colleen Dodge (“Dodge”) and Wayne Miller (“Miller”), was provided a “free and appropriate public education” (“FAPE”) under the Individuals with Disabilities Act (“IDEA”). IDEA requires the State to provide children who

1 have unique mental health needs, like Daughter, with a FAPE reasonably calculated to confer
2 some educational benefit on the child in the least restrictive and appropriate environment. *Board*
3 *of Educ. v. Rowley*, 458 U.S. 176, 192 (1982). Dodge and Miller (collectively, “Parents,” or
4 with and on behalf of Student, “Family”) believed that their Daughter required a residential
5 placement to benefit from her education. They incurred considerable out-of-pocket expenses
6 enrolling their Daughter in various residential treatment centers.

7 Plaintiff Orange County Health Care Agency (“OCHCA”) disagreed and determined,
8 along with the Irvine Unified School District (“District”), that Student’s appropriate placement
9 was public school special education along with outpatient mental health treatment. Believing
10 this placement denied their Daughter a FAPE, Parents sought review at a Due Process hearing
11 before the Office of Administrative Hearing (“OAH”).

12 The Administrative Law Judge (“ALJ”) who presided over the Due Process hearing found
13 that OCHCA procedurally erred in denying Student a FAPE because its mental health report did
14 not reflect all available information. Because the ALJ found a procedural violation, she did not
15 decide whether or not Student is entitled to residential placement as Parents demanded. Thus,
16 the ALJ refused to award prospective relief or future educational costs. But the ALJ found it
17 appropriate to award compensatory relief or costs related to placements occurring after the
18 procedural violation. Thus, the ALJ’s decision was a narrow ruling based on a procedural
19 violation with a limited award.

20 Both parties now seek a reversal of that portion of the ALJ’s narrow decision concerning
21 reimbursement that went against them. OCHCA moves to reverse the ALJ’s award of
22 reimbursement. The Family asks this Court to reverse the portion of the ALJ’s decision denying
23 reimbursement. The Family also seeks \$138,524.03 in attorney fees, plus additional fees
24 through the date of decision for the current motions. The parties submitted on the papers, and
25 the Court did not find it necessary to hold a hearing.

26 The Court **AFFIRMS** the ALJ’s decision in its entirety. The Court **GRANTS** a total
27 award of attorney fees through September 12, 2011 of \$57,819.85 to the Family.
28

1 **FINDINGS OF FACT**

2 The Court makes these Findings of Fact, including any findings of fact in the section
3 entitled Conclusions of Law.

4 As explained in more detail later in this order, the ALJ’s decision is entitled to substantial
5 deference. Applying this standard, the Court finds it appropriate to adopt all the ALJ’s findings
6 of fact. For ease of reference, the ALJ’s essential findings of fact are repeated here. In addition,
7 the Court found it necessary in a few instances to make additional findings of fact to properly
8 address the arguments raised here on appeal. These additional findings are stated at the end of
9 this section.

10
11 **1. ALJ’s FINDINGS OF FACT**

- 12
- 13 1. At the time of the administrative hearing, Student was a 16-year old girl who
14 resided with her parents in the Irvine Unified School District. (ALJ Findings of
15 Fact (“FOF”) ¶ 1.)
 - 16 2. Student has not attended public school since the first grade in 2001 when the
17 District placed Student at the University of California, Irvine-Child Development
18 Center (UCI-CDC). (*Id.* ¶ 2.)
 - 19 3. Beginning in August 2004, the District recommended that Student attend Prentice
20 School, a state-certified, non-public school (“NPS”) in Orange County. Student
21 remained there until she graduated in the eighth grade. (*Id.* ¶ 3.)
 - 22 4. In December 2006, the District referred Student for an AB 3632 mental health
23 assessment. The Student did not qualify for Emotional Disturbance (“ED”). But,
24 OCHCA did approve her for outpatient mental health services for 40 minutes once
25 a month. Parents declined this offer, and continued with the private mental health
26 program. (*Id.* ¶ 5.)
 - 27 5. After graduating from Prentice in 2008, Parents enrolled Student in Brehm
28 Preparatory School (“Brehm”), a California-approved NPS located in Carbondale,

1 Illinois. It is designed for students with complex learning disabilities, but does not
2 have a counseling component. (*Id.* ¶ 6.)

3 6. Brehm requested Student be removed from their program because she displayed
4 emotional issues that Brehm was not equipped to treat. On November 25, 2008,
5 Parents transferred Student to the resident psychiatric ward of Rogers Memorial
6 Hospital (“Rogers”) in Milwaukee, Wisconsin. (*Id.* ¶ 7.)

7 7. On January 2, 2009, Rogers Memorial transferred Student to their acute
8 psychiatric unit, where she remained until she was discharged at the request of her
9 parents on February 2, 2009. (*Id.*)

10 8. Student’s Discharge Summary from Rogers (“Rogers Report”) indicated that
11 Student had made some progress in her therapy and participation in activities. But
12 on January 2, 2009, she became very frustrated, and her aggressive behavior
13 escalated to the point that she required physical restraints. The Rogers Report
14 concluded by stating that Student would most likely require a supportive structured
15 environment, and her educational placement would have to be highly skilled in her
16 complex biopsychosocial issues, including pervasive developmental disorder
17 features, sensory integration issues, depressive disorder, and generalized anxiety.
18 The Rogers Report also noted that Student has severe difficulties in large groups,
19 and is very sensitive to environments that are loud, uncontrolled, and stimulating.
20 (*Id.* ¶¶ 11, 13.)

21 9. After being released from Rogers, Student returned home and completed the 2008-
22 2009 school year in home/hospital studies supervised by the District and Brehm.
23 Student also participated in outpatient therapy. (*Id.* ¶ 14.)

24 10. On March 31, 2009, the District held an Individualized Education Program (“IEP”)
25 meeting. At that meeting, the District recommended that Student continue the
26 home/hospital study and receive a reassessment for ED. The District also referred
27 Student to OCHCA for a mental health assessment, which IEP would use to
28 determine proper placement. (*Id.* ¶ 15.)

- 1 11. The OCHCA mental health referral included another AB 3632 assessment carried
2 out by Dr. Forouz Farzan (“Dr. Farzan”). Dr. Farzan’s 2009 AB 3632 assessment
3 (“Farzan Report”) relied heavily on the 2006 AB 3632 report, which did not
4 contain the most recent information about Student’s mental health. The Farzan
5 Report did not reflect information from the Rogers Report. (*Id.* ¶ 16.)
- 6 12. The Farzan Report also did not include information that she received from a doctor
7 who observed Student at Brehm, who believed that Student needed a small facility
8 that could respond to Student’s naivete, lack of self-control strategies, difficulties
9 problem-solving, ineffective communication skills, and inability to regulate
10 emotions. (*Id.* ¶ 20.)
- 11 13. Dr. Farzan did not recommend that Student be placed in a residential treatment
12 center (“RTC”). Instead, she recommended that Student receive outpatient mental
13 health services to reduce Student’s angry outbursts and irritability, and to improve
14 Student’s ability to regulate her emotions and cope. (*Id.* ¶ 22.) Dr. Farzan testified
15 that Student’s behaviors only escalated once she was placed in a residential
16 program. Since the behaviors did not occur at home, Student belonged at home.
17 Further, Dr. Farzan stated that she believed Parents did not want Student to return
18 home given their unshakeable demand for a RTC placement. (*Id.* ¶ 23.)
- 19 14. At a June 5, 2009 interim IEP meeting, the IEP team changed Student’s primary
20 eligibility category to ED, but there was no offer of placement made at the
21 meeting. Parents notified the District of their intent to privately place Student.
22 (*Id.* ¶ 25.)
- 23 15. Before the final IEP offer was made, Parents unilaterally enrolled Student at Maple
24 Lake Academy (“Maple Lake”), a RTC in Payson, Utah, in June 2009. Student
25 began to deteriorate mentally immediately upon arrival at Maple Lake, and Student
26 developed a new psychiatric crisis, including hallucinations and hearing voices.
27 (*Id.* ¶¶ 26-27.)
- 28 16. Maple Lake requested that Student be removed from their program, and Parents

1 had Student placed at Safeguard Adolescence Services (“Safeguard”) until Student
2 could be admitted to the Aspen Institute for Behavioral Assessment (“Aspen”) on
3 July 8, 2009. Aspen is a psychiatric hospital and diagnostic center. (*Id.* ¶ 27.)

4 17. At a July 23, 2009 interim IEP meeting, Parents informed the IEP team of
5 Student’s placement at Maple Lake and discharge due to safety issues. Dr. Farzan
6 presented OCHCA’s recommendation of outpatient therapy at this meeting, which
7 was prepared before information concerning Maple Lake was available. The notes
8 of the meeting state that Dr. Farzan would take the new information under
9 consideration and amend her assessment result. (*Id.* ¶¶ 46-7.)

10 18. Dr. Farzan contacted Maple Lake and Aspen but did not prepare an amended
11 written report. (*Id.* ¶ 48.)

12 19. At the final IEP meeting on July 30, 2009, Dr. Farzan orally reaffirmed OCHCA’s
13 recommendation of outpatient treatment. (*Id.* ¶ 52.) Based on OCHCA’s
14 recommendation, the IEP team offered Student outpatient therapy of 40 minutes
15 four times a month, 30 minutes of case management per month, and collateral
16 family therapy for 60 minutes twice a month. The District offered to place Student
17 in the ED program at Irvine High School, a public high school in the District. (*Id.*
18 ¶ 53.)

19 20. Student left Aspen on September 5, 2009. Before discharge, Aspen conducted a
20 multidisciplinary assessment of Student and prepared a written report (“Aspen
21 Report”). The Aspen Report recommended that Student be placed in a highly
22 supervised RTC in a very small setting. The report also stated that Student would
23 do best with peers who have similar mental issues. (*Id.* ¶¶ 44-5.)

24 21. After Student was discharged from Aspen on September 5, 2009, she stayed at
25 home until her parents unilaterally placed her at the Waterfall Academy
26 (“Waterfall”) in Ogden, Utah on November 10, 2009. (*Id.* ¶ 56.)

27 22. Waterfall is a for-profit residential treatment facility with an educational
28 component operated by the Oak Grove School (“Oak Grove”), which is

1 conditionally certified as a NPS by the state of California. Oak Grove is operated
2 as a non-profit, and is in the process of obtaining full NPS status. (*Id.* ¶ 57.)
3

4 **2. ADDITIONAL FINDINGS OF FACT**

- 5
- 6 1. An IEP is a written statement for each student with a disability that includes a
7 student's level of academic achievement and functional performance; measurable
8 annual goals; description of progress; and special education and related services to
9 be provided to a student. This statement is prepared by an IEP team that consists
10 primarily of the student's parents, educators, representative of the local educational
11 agency, and others with special expertise about the child. 20 U.S.C. § 1414(d)(1).
- 12 2. The Family first made a Request for Due Process ("RFDP") on September 21,
13 2009. The purpose of a RFDP is to seek review of whether a student's placement
14 offer provides a FAPE. The request was withdrawn on November 4, 2009 and
15 then re-filed on November 10, 2009 . (Administrative Record ("AR") at 9.)
- 16 3. The Family's RFDP made three claims: (1) FAPE was denied when OCHCA and
17 the District failed to provide appropriate placement in a RTC; (2) OCHCA and the
18 District have not recommended or provided a specific setting that would allow
19 Student to benefit from her education; and (3) FAPE was denied because OCHCA
20 and the District developed cursory IEP goals and failed to address all of Student's
21 needs. (*Id.* at 9-10.)
- 22 4. On March 29, 2010, the Family and the District settled all issues related to the
23 District. (ALJ Decision at 1.)
- 24 5. The Due Process hearing concerning OCHCA took place on March 29 and 30,
25 2010, and April 1 and 29, 2010. The matter was submitted on June 7, 2010 upon
26 the ALJ's receipt of closing briefs. The ALJ's decision was issued on August 9,
27 2010. (*Id.*)
- 28 6. On March 18, 2010, OCHCA made a settlement offer to the Family that included

1 \$15,000 for reimbursement of past mental health costs and residential placement at
2 Mingus Mountain Academy (“Mingus”), a California-certified, non-profit RTC.
3 (Palmer Supp. Decl. Ex. 7 at 31.)

- 4 7. The ALJ found that Student was denied a FAPE because OCHCA failed to provide
5 an appropriate mental health assessment, which constitutes a procedural violation
6 of the IDEA. The ALJ granted Parents reimbursement for the Waterfall admission
7 fee, residential and clinical services for Waterfall from December 1, 2009 through
8 the 2010 extended school year, and airport fees incurred by Student from
9 December 1, 2009 through the end of the 2010 extended school year. The ALJ
10 denied Parents reimbursement for the educational service portion of Waterfall’s
11 tuition, and the Safeguard and Aspen placements. Finally, the ALJ denied Student
12 prospective placement at Waterfall. (ALJ Order at 23.)

13
14 **PRELIMINARY MATTERS**

15
16 **1. JUDICIAL NOTICE**

17
18 OCHCA asks the Court to take judicial notice of two orders of the Central District of
19 California, the Family’s Due Process Complaint, and the ALJ’s decision of this matter. Under
20 Federal Rule of Evidence 201, “[a] judicially noticed fact must be one not subject to reasonable
21 dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court
22 or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot
23 reasonably be questioned.” Fed. R. Evid. 201. Courts may take judicial notice of “*undisputed*
24 matters of public record,” but generally may not take judicial notice of “*disputed* facts stated in
25 public records.” *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (emphasis in
26 original). The Court notes that it may not be necessary for parties to request judicial notice of
27 court orders, especially if they are available on online legal databases.

28 The Court finds that these documents satisfy the requirements of Rule 201. The Court

1 GRANTS OCHCA’s request for judicial notice of the documents themselves, but not for the
2 truth of any statements or assertions contained in them.

3
4 **2. EVIDENTIARY OBJECTIONS**

5
6 OCHCA submitted voluminous evidentiary objections to the Declarations of Kathleen M.
7 Loyer, Andrea Marcus, Eric B. Freedus, Patricia E. Cromer, Tania L. Whiteleather, and Danielle
8 Augustin. When parties submit numerous objections, it is often “unnecessary and impractical . . . to
9 methodically scrutinize each objection and give a full analysis of each argument raised.” *Doe v.*
10 *Starbucks, Inc.*, No. SACV 08-0582 AG (CWx), 2009 WL 518773, at *1 (C.D. Cal. Dec. 18, 2009).
11 The Court has reviewed the objections and relies only on admissible evidence. *See F.T.C. v.*
12 *Neovi, Inc.*, 598 F. Supp. 2d 1104, 1118 n.5 (S.D. Cal. 2008) (“The parties have each filed
13 evidentiary objections. However, in deciding the present motions, the Court has only relied
14 upon admissible evidence.”); *Schroeder v. San Diego Unified School Dist.*, Case No. 07-cv-
15 1266-IEG (RBB), 2009 WL 1357414, at *2, n.1 (S.D. Cal. May 13, 2009). To the extent the
16 Court relies on evidence under objection, those objections are overruled.

17
18 **CONCLUSIONS OF LAW**

19
20 The Court makes these conclusions of law, including any conclusions of law in the
21 Findings of Fact.

22
23 **1. LEGAL STANDARD**

24
25 The IDEA requires states receiving federal funding for education to provide a FAPE to all
26 disabled school children. 20 U.S.C. § 1412(a)(1)(A). A FAPE must be provided at public
27 expense, meet state educational standards, and must conform to the child’s needs developed
28

1 through an IEP. 20 U.S.C. § 1401(9). The IDEA also allows parents to unilaterally place their
2 child in a private school and receive reimbursement for the cost of enrollment if the public
3 school system did not provide a FAPE. 20 U.S.C. § 1412(a)(10)(C). “Parents are entitled to
4 reimbursement, however, only if the court concludes both that the public placement violated
5 IDEA and the private school placement arranged by the parents was proper under the Act.”
6 *Covington*, 780 F. Supp. 2d at 1020 (citing *Florence County Sch. Dist. Four v. Carter*, 510 U.S.
7 7, 15 (1993)).

8 There is a two-step analysis to determine whether the District complied with the IDEA.
9 First, a court must determine whether the District complied with the IDEA’s procedures.
10 *Rowley*, 458 U.S. at 206. Second, a court must determine whether the IEP was “reasonably
11 calculated to enable the child to receive educational benefits.” *Id.* at 206-7.

12 When conducting this analysis, a district court reviewing an administrative decision “shall
13 receive the records of the administrative proceedings, shall hear additional evidence at the
14 request of a party, and, basing its decision on the preponderance of the evidence, shall grant such
15 relief as the court determines appropriate.” 20 U.S.C. § 1415(i)(2)(C). “This modified de novo
16 standard requires that due weight be given to the administrative proceedings.” *Covington v.*
17 *Yuba City Unified Sch. Dist.*, 780 F. Supp. 2d 1014, 1019 (E.D. Cal. 2011) (citing *Bd. of Educ.*
18 *of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982) (internal
19 quotation marks omitted)).

20 ALJ decisions should be given “substantial weight” when they “evinced[] . . . careful,
21 impartial consideration of the all the evidence and demonstrate[] . . . sensitivity to the
22 complexity of the issues presented.” *County of San Diego v. Cal. Special Educ. Hearing Office*,
23 93 F.3d 1458, 1466 (9th Cir. 1996) (quoting *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467,
24 1476 (9th Cir. 1993). “Deference to the ALJ is especially warranted in the area of witness
25 credibility.” *Lazerson v. Capistrano Unified School District*, No. SACV 09-958 DOC (Anx),
26 2011 WL 1212155 at *5 (C.D. Cal. 2011) (citing *Amanda J. ex. rel. Annette J. v. Clark County*
27 *Sch. Dist.*, 267 F.3d 877, 889 (9th Cir. 2010) (directing IDEA reviewing courts to follow
28 “general principles of administrative law which give deference to the unique knowledge and

1 experience of state agencies while recognizing that a [hearing officer] who receives live
2 testimony is in the best position to determine issues of credibility”)).

3 As noted, the ALJ’s decision should receive “substantial weight” if it was careful,
4 thorough, and sensitive to complexity. The ALJ’s twenty-four page opinion included sixty-two
5 paragraphs of findings of fact. The Court has independently reviewed the administrative record
6 and finds the ALJ’s findings of fact to be accurate and very thorough. For example, the ALJ
7 made a seventeen paragraph finding summarizing the Aspen Report. The ALJ also carefully
8 explained its decision grounded in the facts and the law, dedicating fifteen paragraphs to general
9 legal conclusions and another eighteen paragraphs analyzing why Student was denied a FAPE
10 and what the appropriate remedy should be. Although OCHCA argues that the ALJ’s decision
11 was not thorough and careful because the ALJ did not record the testimony of Dr. Farzan
12 (OCHCA Opening Brief (“OCHCA Brief”) at 32:26-33:2), this was due to a technical
13 malfunction (Loyer Decl. ¶ 7) and not the fault of the ALJ. Thus, the Court gives substantial
14 deference to the ALJ’s findings in its review.

15
16 **3. ALJ’S FINDINGS THAT DISTRICT PROCEDURALLY ERRED DENYING**
17 **FAPE**

18
19 The ALJ found that the IEP team failed to comply with IDEA’s procedures because the
20 IEP team did not consider all the information available to it regarding Student’s mental health.
21 (ALJ Legal Conclusions (“ALJ Decision”) ¶ 26.) The ALJ found that the IEP team’s
22 information was insufficient because the Farzan Report, which the IEP relied on, was
23 incomplete. For example, it did not reference the Rogers Report or contain sufficiently up-to-
24 date information about Student’s needs. (*Id.* ¶ 21.) The ALJ also found that even though the
25 IEP team requested additional written information regarding Student’s experiences at Maple
26 Lake and Aspen, there is no written record that the IEP considered this most recent information.
27 (*Id.* ¶ 24.) Instead, the ALJ found that Dr. Farzan only “selectively emphasized statements in the
28 reports which supported her prior conclusions” instead of providing complete reports. (*Id.*) The

1 ALJ concluded that Farzan’s “overwhelming failure” to present a complete report met the
2 criteria for a procedural error in denying FAPE. (*Id.* ¶ 26.)

3 OCHCA now makes four arguments that the ALJ erred its decision that FAPE was
4 denied: (1) it was a procedural issue that was outside of the ALJ’s jurisdiction; (2) the parents
5 did not meaningfully participate in the IEP; (3) the Family failed to prove that Student required
6 residential placement to benefit from her education; and (4) the ALJ did not properly consider
7 the testimony of Dr. Farzan. (OCHCA Brief at 18:3-4, 20:12-14, 21:25-26, 32:1-25.)

8 9 **3.1 Whether ALJ Exceeded its Jurisdiction**

10
11 The ALJ found that OCHCA’s failure to provide a complete report to the IEP constituted
12 a procedural error denying FAPE. OCHCA argues that the ALJ exceeded her jurisdiction
13 because her decision was based on an issue not presented to the ALJ in the Family’s RFDP.
14 (OCHCA Brief at 18:15-17.) IDEA provides that “[t]he party requesting the due process hearing
15 shall not be allowed to raise issues at the due process hearing that were not raised in the [RFDP],
16 unless the other party agrees otherwise.” 20 U.S.C. § 1415(f)(3)(B); *see also County of San*
17 *Diego v. Cal. Special Ed. Hearing Office*, 93 F.3d 1458, 1465 (9th Cir. 1996) (noting that a party
18 can only raise what it had previously raised at an administrative hearing). Specifically, OCHCA
19 argues that although the ALJ stated that “[s]tudent raises a procedural concern that the [Farzan
20 Report] . . . was cursory,” the Family did not actually challenge the sufficiency of the Farzan
21 Report in their RFDP. (OCHCA Brief at 18:17-25.) This argument fails.

22 In the Family’s RFDP, they argued that FAPE was denied because the IEP goals were
23 cursory and failed to address all of Student’s functioning deficits. (*See* AR at 10.) Although the
24 Family’s RFDP did not specifically mention the Farzan Report, the ALJ’s ultimate conclusions
25 that the IEP was inadequate and FAPE was denied were alleged. Further, § 1415(f)(3)(B)
26 appears to restrict parties from raising new issues at a due process hearing, but does not appear
27 to restrict the grounds on which an ALJ can make their decision. *See* 20 U.S.C. § 1415(f)(3)(B)
28 (The *party* requesting the due process hearing shall not be allowed to raise issues . . . that were

1 not raised in the [RFDP]. . . .”) (emphasis added). Because the Family’s RFDP sufficiently
2 alleged the issue of procedural error in denying FAPE and § 1415 does not appear to limit the
3 discretion of the hearing officer, the ALJ did not exceed her jurisdiction.

4 5 **3.2 Parents Participation in IEP**

6
7 OCHCA argues that even if a procedural violation occurred, the violation was not
8 material because Parents obstructed the IEP process by refusing to try any options other than
9 residential placement. (OCHCA Brief at 21:20-24.) To support their argument, OCHCA cites
10 non-Ninth Circuit authority holding that a procedural violation does not deny FAPE if a
11 student’s parents did not meaningfully participate in the IEP process. (*Id.* at 20-21); *See, e.g.,*
12 *Sytsema v. Academy Sch. Dis. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

13 The Family contends that Parents participated as conscientious parents in the IEP process.
14 (Family’s Reply to OCHCA’s Brief (“Family’s Reply”) at 14:15-17.) Parents actively
15 participated and attended IEP team meetings up until the final IEP meeting on July 30, 2009. At
16 that meeting, OCHCA told Parents it would provide public school placement and outpatient
17 mental health services. After Parents received OCHCA’s offer, Aspen told Parents that Student
18 needed residential treatment. Parents then sought unilateral placement because they believed
19 that OCHCA’s offer did not provide Student with an adequate FAPE given her need for an RTC.
20 Their decision to seek unilateral placement at that time did not interfere with the IEP process,
21 which had already concluded.

22 The Court finds that this case is distinct from OCHCA’s cited authority because Parents
23 did not withdraw from or terminate the IEP process before a final plan was offered. *See, e.g.,*
24 *Sytsema*, 538 F.3d at 1315 (“[Parents] unilaterally terminated the IEP development process due
25 to their concerns about the District’s plan to place [their son] in an integrated classroom. The
26 [parents] made this decision in spite of the fact that the District had not yet finalized its offer for
27 educational services.”); *Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 1066 (7th Cir.
28 2007) (“[I]t is not that [the] parents were denied the opportunity to actively and meaningfully

1 participate in the development of [son's] IEP; it was that they chose not to avail themselves of
2 it.”). Rather, Parents were active participants in the IEP process. With Parents’ cooperation,
3 OCHCA had available to it sufficient information about Students’ mental health, including the
4 Rogers Report. OCHCA simply chose not to rely on it. It appears that it was OCHCA, not
5 Parents, who did not fully participate in the IEP process. Because Parents did fully participate in
6 the IEP process, this does not excuse OCHCA’s procedural error.

7 8 **3.3 Whether RTC was Necessary for Education**

9
10 OCHCA argues that even if a procedural violation occurred, the violation was not
11 material because “the IEP was [still] reasonably calculated to enable [Student] to receive
12 educational benefits.” (OCHCA Brief at 22:3.) Specifically, OCHCA claims that the Family
13 failed to demonstrate that Student’s mental health issues required residential treatment for
14 Student to benefit from her education. (*Id.* at 22:12-15.) OCHCA argues that because Student’s
15 educational needs are distinct from her mental health needs, Student’s education did not suffer
16 due to the emotional problems affecting her home life. (*Id.*)

17 The Family responds that Student’s “social and emotional needs are ‘intertwined’ with
18 her educational needs.” (Family’s Reply at 5:12-13.) The Family further claims that OCHCA’s
19 recommended public school placement was improper because the District had already agreed to
20 fund a NPS. Thus, OCHCA’s recommendation ignored Student’s educational history, which
21 already included placement at NPS. (*Id.* at 17-20.)

22 The Court finds that it does not need to decide this issue to affirm the procedural violation
23 at issue here. It is sufficient to conclude that an RTC *might* have been necessary. The
24 procedural violation found by the ALJ was that the IEP made its offer without considering all the
25 necessary information. Since the IEP’s offer may have been different if it had complete
26 information, the procedural violation may have deprived Student of educational benefits. *See*
27 Cal. Ed. Code § 56505(f)(2) (stating that a due process hearing officer may find that a student
28 was denied FAPE for a procedural violation only if the violation (1) impeded the student’s right

1 to FAPE, (2) significantly impeded the parent’s opportunity to participate in the decisionmaking
2 process, or (3) caused a deprivation of educational benefits). Thus, the Court need not decide
3 whether Student’s social and emotional issues have an effect on her educational needs or
4 whether the IEP’s offer would have provided some educational benefits.

5 6 **3.4 Farzan Testimony**

7
8 Although Dr. Farzan testified that she reviewed all relevant information in writing her
9 report, the ALJ found that FAPE was denied through a procedural error in part because the
10 Farzan Report did not sufficiently reflect such review. The ALJ also noted that Dr. Farzan “did
11 not present as a straightforward witness, . . . had difficulty with recall, and was prone to making
12 assumptions.” (ALJ FOF ¶ 23.) As noted, Dr. Farzan’s testimony at the Due Process hearing
13 was not recorded due to a technical malfunction. OCHCA contends that the ALJ erred because
14 she did not clearly recall Dr. Farzan’s testimony. (OCHCA Brief at 32:26-28.) Further,
15 OCHCA requests leave to supplement the record with a Declaration from Dr. Farzan, or in the
16 alternative, to have Dr. Farzan appear before the Court.

17 The Court GRANTS OCHCA’s request for leave and DENIES the request for live
18 testimony. The Court has considered the declaration submitted by Dr. Farzan but finds that it
19 does not change any of the Court’s findings. Dr. Farzan’s declaration in pertinent part simply
20 reiterates that she considered the Rogers Report and other information in her Report. Giving
21 substantial deference to the ALJ, the Court agrees that the Farzan Report does not sufficiently
22 reflect all the information available in the Rogers Report and the IEP team was not adequately
23 informed of all available information at the final IEP meeting on July 30, 2009. Having
24 considered Dr. Farzan’s declaration, there is no need for live testimony.

25 26 **3.5 Conclusion**

27
28 Giving substantial due weight to the ALJ’s findings, the Court AFFIRMS the ALJ’s

1 conclusion that Student was denied a FAPE because the IEP team was not adequately informed
2 of all relevant information.

3
4 **4. REMEDY**

5
6 Because the ALJ found that Student was denied a FAPE, she awarded Parents
7 compensatory relief in the form reimbursement for costs that occurred after the IEP's offer,
8 through the end of the 2010 extended school year. Specifically, she reimbursed Parents for the
9 Waterfall admission fee, the daily cost of Student's residential and clinical services at Waterfall
10 from December 1, 2009 through the end of the 2010 extended school year, and airport fees.
11 (ALJ Order ¶ 2.) *See Burlington Sch. Comm. v. Department of Education*, 471 U.S. 359, 369
12 (1985) (noting that retroactive reimbursement for the cost of private placement may be an
13 appropriate remedy if a student is denied FAPE). But the ALJ denied Parents' request for
14 reimbursement for Student's placements at Safeguard in early July 2009 and Aspen on July 8,
15 2009. The ALJ denied these costs because they were incurred before the IEP made its
16 placement offer on July 30, 2009. (ALJ Decision ¶ 29.) Thus, they could not have been made
17 after a denial of FAPE because no such offer had yet been made. Instead, the ALJ found that the
18 costs were incurred as a response to a medically-related emergency situation, for which special
19 education mental health services are not designed. (*Id.*)

20 The ALJ also denied awarding prospective relief entitling Student to a placement at
21 Waterfall or any other RTC in the future. (ALJ Order ¶ 3.) The ALJ specifically noted that her
22 opinion did not mean that Student was entitled to RTC placement. (*See* ALJ Decision ¶ 31
23 (“[T]he IEP team has yet to consider or reconsider appropriate prospective placement for
24 Student. Further, should RTC be deemed appropriate, the IEP team faces additional . . .
25 requirements”).) The Court agrees that the IEP team should reconsider Student's
26 appropriate placement taking into account all available information. (*Id.*)

27 Both parties now seek to overturn portions of the ALJ's decision regarding
28 reimbursement. OCHCA wants the reimbursement costs awarded to the Family for the

1 Waterfall placement overturned. The Family seeks to overturn the denial of reimbursement for
2 the Aspen placement.

3 4 **4.1 OCHCA's Arguments Against Reimbursement of Waterfall Placement**

5
6 The ALJ awarded Parents reimbursement for the Waterfall admission fee, the daily cost
7 of Student's residential and clinical services, and airport fees. OCHCA makes three arguments
8 as to why the ALJ's order of reimbursement for Waterfall was in error: (1) Parents' unilateral
9 residential placement of Student was not appropriate; (2) Parents did not provide notice; (3) and
10 the ALJ contradicted itself by denying prospective placement but then constructively ordering
11 prospective placement.

12 First, OCHCA contends that the reimbursement award for the Waterfall placement was in
13 error because Parents' placement was inappropriate. OCHCA asserts that the placement was
14 inappropriate because Student's emotional and behavioral issues did not occur in the classroom,
15 so residential treatment was unnecessary. (OCHCA Brief at 26:13-27:7.) This argument is the
16 same one raised to support OCHCA's position that a FAPE was not denied to Student. Because
17 the Court has already overruled this specific argument and found that FAPE was denied, it also
18 finds that Parents' unilateral placement was appropriate.

19 Second, OCHCA argues that reimbursement for Waterfall should be denied because
20 Parents failed to provide adequate notice of unilateral placement under
21 20 U.S.C. § 1412(a)(10)(C)(iii). (*Id.* at 28:23-29:2.) 20 U.S.C. § 1412(a)(10)(C)(iii) states that
22 reimbursement *may* be reduced or denied if parents do not provide notice at the last IEP meeting
23 or in writing ten days before a placement is made. Here, there is no evidence that Parents gave
24 notice about Student's placement at Waterfall at the final IEP meeting on July 30, 2009. (*See*
25 AR at 596.) Parents have also not argued that they provided written notice in advance. But
26 Parents did give some notice. At the June 5, 2009 IEP meeting, Parents informed the District of
27 their intent to place Student in a residential placement center. (AR at 594.) And at the July 23,
28 2009 IEP meeting, Parents informed OCHCA that Student had been unilaterally placed at Aspen

1 and Maple Lake. (AR at 595.)

2 Regardless, failure to meet the notice requirement alone is enough reason to deny
3 reimbursement. *See Covington*, 780 F. Supp. 2d at 1025. Even if formal notice was not properly
4 given, § 1412(a)(10)(C)(iii) allows the Court to exercise its discretion. The Court declines to
5 deny reimbursement for Waterfall because OCHCA had nevertheless been aware of Parents'
6 strong intent to find residential placement.

7 Third, OCHCA argues that the ALJ erred by stating that she was denying prospective
8 relief, but then effectively granted prospective instead of compensatory relief by ordering
9 reimbursement through the 2010 extended school year. (OCHCA Brief at 33:8-12.) OCHCA
10 points out that the due process hearing ended on April 29, 2010, while the 2010 extended school
11 year did not conclude until August 2010. Thus, OCHCA claims that the ALJ granted four
12 months of prospective instead of compensatory relief. (*Id.* at 33:11-12.) But OCHCA
13 mischaracterizes the record. While the due process hearing did conclude on April 29, 2010, the
14 matter was not submitted until June 7, 2010 when the ALJ received closing briefs, and the ALJ's
15 decision was not released until August 9, 2010. Because the ALJ decision was in August 2010,
16 reimbursement through August 2010 is compensatory relief and not prospective. Thus, the
17 reimbursement award through the 2010 extended school year did not contradict the ALJ's
18 conclusion that she would not award prospective relief.

19 The Court AFFIRMS the reimbursement award of the Waterfall admission fee, the daily
20 cost of residential and clinical services for Waterfall, and airport fees.

21 22 **4.2 Parents Argument Seeking Additional Reimbursement for Aspen Placement**

23
24 The ALJ denied Parents reimbursement for Student's placements at Safeguard and Aspen.
25 Parents now argue that the ALJ erred denying reimbursement for Aspen. Parents do not contest
26 the Safeguard denial. Parents contend that Student's stay at Aspen was an educationally-related
27 service that should be reimbursed because Student went to Aspen for diagnosis and assistance in
28 developing an educational plan. (Family's Opening Brief ("Family's Brief") at 23:11-15.) In

1 response, OCHCA defends the ALJ's conclusion that the Aspen placement was not education
2 related. OCHCA argues that it was not education related because Student was only sent to
3 Aspen after being discharged from Maple Lake due to behavioral issues. (OCHCA's Response
4 to Family's Brief ("OCHCA Reply") Reply at 6:8-10.) OCHCA further points out that the
5 Aspen Report even states that Student was "admitted on an emergency basis." (*Id.* at 22-23; AR
6 at 544.)

7 To determine whether a placement may be reimbursable, it is necessary to consider
8 whether a student's "placement [is] necessary for educational purposes, or whether the
9 placement is a response to medical, social, or emotional problems that is necessary quite apart
10 from the learning process." *Clovis Unified Sch. Dist. v. California Office of Admin. Hearings*,
11 903 F.2d 635, 643 (9th Cir. 1990). The Court agrees with the ALJ's finding that Student was
12 admitted to Aspen in an emergency medical situation, and not as a response to the Farzan
13 Report, the IEP, or another education related issue. So, the ALJ did not err in denying Parents
14 reimbursement for the Aspen placement.

15 16 **5. ATTORNEY FEES**

17
18 "In any action or proceeding brought under [the IDEA], the court, in its discretion, may
19 award reasonable attorneys' fees as part of the costs . . . to a prevailing party who is the parent of
20 a child with a disability." 20 U.S.C. § 1415(i)(3)(B). The prevailing party standard is not a high
21 bar. "A prevailing party for the purpose of awarding attorney's fees is a party which 'succeeds
22 on any significant issue in litigation which achieves some of the benefit the parties sought in
23 bringing the suit.'" *Parents of Student W. v. Puyallup School Dist.*, 31 F.3d 1489, 1498 (9th Cir.
24 1994) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). But, "the inquiry does not end
25 with a finding that the plaintiff obtained significant relief. A reduced fee award is appropriate if
26 the relief, however significant, is limited in comparison to the scope of the litigation as a whole."
27 *Hensley*, 461 U.S. at 440.

28 The IDEA specifically allows the Court to reduce the amount of attorney fees.

1 “[W]henever the court finds that--
2 (i) the parent, or the parent’s attorney, during the course of the action or
3 proceeding, unreasonably protracted the final resolution of the controversy;
4 (ii) the amount of the attorneys’ fees otherwise authorized to be awarded
5 unreasonably exceeds the hourly rate prevailing in the community for
6 similar services by attorneys of reasonably comparable skill, reputation,
7 and experience;
8 (iii) the time spent and legal services furnished were excessive considering
9 the nature of the action or proceeding; or
10 (iv) the attorney representing the parent did not provide to the local
11 educational agency the appropriate information in the notice of the
12 complaint described in subsection (b)(7)(A),
13 the court shall reduce, accordingly, the amount of the attorneys’ fees awarded
14 under this section.”

15 20 U.S.C. § 1415(i)(3)(F).

16 This inquiry has three steps. First, the Court must determine whether the Family was the
17 prevailing party. If so, the Court then considers whether to grant attorney fees. If the Court
18 exercises its discretion to grant fees, then the Court must consider what would constitute
19 reasonable attorney fees.

20 OCHCA correctly raises the issue that requesting attorney fees may be premature under
21 the Federal Rules of Civil Procedure because the Court has not entered judgment and attorney
22 fees are normally awarded after judgment by a timely filed motion. *See* Fed. R. Civ. Proc.
23 54(d)(2); (OCHCA Reply at 7:4-7.) But, since the Court is affirming the administrative
24 decision and both parties fully briefed the issue of attorney fees in their papers, the Court finds
25 it efficient to address fees now.

26 **5.1 Prevailing Party**

27 A prevailing party need only to have succeeded on “any significant issue.” *Park v.*
28 *Anaheim Union High School Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006). When a party has
succeeded on at least one point, attorney fees may properly be denied only when “[a party’s
success on a legal claim can be characterized as purely technical or de minimis.” *Id.* at 1036
(quoting *Kletzelman v. Capistrano Unified School Dist.*, 91 F.3d 68, 71 (9th Cir. 1996).

The Court finds that the Family is a “prevailing party” under § 1415. The Court affirms

1 the OAH ruling that the Family prevailed on the reimbursement of costs for the placement at
2 Waterfall. This is sufficient to establish that the Family succeeded on “any significant issue.”
3 *Park*, 464 F.3d at 1034.

4 5 **5.2 Whether to Grant Attorney Fees**

6
7 The Court has discretion to determine whether or not to grant any attorney fees. 20
8 U.S.C. § 1415(i)(3)(B) (“The court, in its discretion, *may* award reasonable attorneys’ fees
9”) (emphasis added). “[T]here are circumstances when even a plaintiff who formally
10 prevails . . . should receive no attorney’s fees at all.” *Aguirre v. Los Angeles Unified School*
11 *Dist.*, 461 F.3d 1114, 1121 (9th Cir. 2006) (internal quotations omitted).

12 First, OCHCA contends that the Family should not be awarded attorney fees because
13 OCHCA’s settlement offer was more favorable than the result of the due process hearing.
14 (OCHCA Response at 8:23-25.) Under § 1415(i)(3)(D)(I), attorney fees may be denied if the
15 settlement offer is more favorable than the relief granted by the administrative hearing.
16 OCHCA argues that their timely settlement offer was more favorable because the offer included
17 a placement at Mingus, a California-certified, non-profit RTC that met all of Student’s needs.
18 (*Id.* at 8:11-16.)

19 In response, the Family makes three arguments explaining why OCHCA’s settlement
20 offer was not more favorable. First, it was not more favorable because it included an agreement
21 that there would not be a prevailing party, which meant that the Family effectively waived
22 attorney fees. (Family’s Brief at 36:14-16.) Second, the settlement offer’s Mingus placement
23 was only on a trial basis. (*Id.* at 37:5-7.) And third, the settlement offer did not provide full
24 reimbursement of expenses. (*Id.* at 37:7-10.)

25 The Court need not address each of these arguments to conclude that OCHCA’s
26 settlement offer was not more favorable than the result of the Due Process hearing. While the
27 offer did include \$15,000 in reimbursement to the Parents, this amount does not completely
28 cover all of Parents’ reimbursable expenses for Waterfall according to the Court’s calculation,

1 and OCHCA does not specifically argue that it does. The offer also did not provide for attorney
2 fees, a significant expense to the Family that would be lessened by prevailing at the Due
3 Process hearing. Because the settlement offer was not more favorable, awarding attorney fees
4 is not prohibited under § 1415(i)(3)(D)(I).

5 Second, OCHCA argues that the Family should be estopped from recovering attorney
6 fees before March 29, 2010, because the Family settled with the District on that day, and the
7 settlement presumably included a provision for attorney fees. (OCHCA Reply at 10:6-10.)
8 Allowing the Family to recover attorney fees twice for the same work would be manifestly
9 unreasonable. *See Corder v. Brown*, 25 F.3d 833, 840 (9th Cir. 1994) (“[A] non-settling
10 defendant is entitled to offset attorney’s fees owed by the amount already paid by settling
11 defendants.”). There is insufficient evidence for the Court to definitively conclude that the
12 settlement between the Family and the District contained an attorney fees provision. But the
13 Family rejected the OCHCA settlement offer, at least in part, because it did not provide for
14 attorney fees, so it is reasonable to presume that attorney fees were included to some degree in
15 the District’s settlement. The Court refuses to deny all attorney fees before March 29, 2010 for
16 this reason, but it is a factor the Court considered in determining reasonable fees.

17 The Court finds that the Parents are entitled to attorney fees under § 1415, though only to
18 a limited and reasonable extent as the Court will now address.

19 20 **5.3 Reasonable Attorney Fees**

21
22 In granting attorney fees, the Court “shall [consider the] rates prevailing in the
23 community in which the action or proceeding arose for the kind and quality of services
24 furnished. No bonus or multiplier may be used in calculating the fees awarded under this
25 subsection.” 20 U.S.C. § 1415(i)(3)(C). The Court may also consider to what extent a party
26 prevailed in determining reasonable attorney fees. *Van Duyn v. Baker School Dist. 5J*, 502 F.3d
27 811, 826 (9th Cir. 2007) (remanding to district court for determination of attorney fees and
28 noting district court’s discretion to consider that plaintiff prevailed on only one issue); *Aguirre*,

1 461 F.3d at 1118 (“[T]he level of a[n IDEA] plaintiff’s success is relevant to the amount of
2 fees to be awarded.”) (quoting *Hensley*, 461 U.S. at 430).

3 The Family requested total attorney fees of \$138,524.03, which includes \$58,179.85 for
4 the Due Process hearing (Family’s Brief at 31:13), and \$80,344.18 for the current matter. (*Id.*
5 at 32:9-10.) The Court first considers the fees requested through the Due Process hearing, and
6 then turns to the fees requested for the instant matter. Although the Court explains the basis for
7 its final rulings below, the Supreme Court has held that trial courts may take into account their
8 overall sense of a suit, and may use estimates in calculating and allocating an attorney’s time.”
9 *Fox v. Vice*, 131 S.Ct. 2205, No. 10–114, 2011 WL 2175211, at *8 (Mar. 22, 2011) (finding
10 that “[t]rial courts need not, and indeed should not, become green-eyeshade accountants.”); *see*
11 *also Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (the determination of fees “should not
12 result in a second major litigation.”)

13 14 5.3.1 Attorney Fees Through the Due Process Hearing

15
16 The Family claims they are entitled to 25.0 hours of attorney work billed at \$300 per
17 hour, 112.4 hours at \$400 per hour, plus other fees and costs allegedly bringing the total fees
18 through the Due Process hearing to \$58,179.85. (Family’s Brief at 31:11-13.) The Court finds
19 that these fees are unreasonable for a number of reasons. First, the calculation performed by the
20 Family in reaching this sum is wrong. Calculating, 25 hours x \$300/hr + 112.4 hours x \$400/hr
21 + \$3550 clerk fees + \$2069.85 costs = \$58,079.85—not \$58,179.85. While this is a small
22 discrepancy, the mistake is indicative of the quality of the papers presented to the Court and
23 weighs against a finding that the Family’s requested fees are reasonable.

24 The Family’s counsel’s initial fee was \$300 per hour, but increased to \$400 per hour in
25 November 2009 and then to \$450 per hour in November 2010. (*Id.* at 31:3-7.) The Family
26 provides insufficient justification for the significant increase in rate, and the Court finds that
27 only the \$300 rate is reasonable for the work performed. In reaching this conclusion, the Court
28 takes into account the quality of the work presented. The Family’s submitted papers were

1 repetitive, unclear, and generally not well written. The Court does not think that \$450 per hour
2 should be paid for this quality of work product.

3 Next, the Court considers the quantity of hours billed. The Court finds it reasonable to
4 reduce the Family's requested 137.4 attorney hours from 137.4 to 120 because it is unclear to
5 the Court how much attorney fees the Family recovered through their settlement agreement
6 with the District. Thus, the lodestar calculation is 120 hours x \$300/hour = \$36,000. The Court
7 grants the Family the requested total for clerk fees and costs of \$3,550 + \$2,069.85, for a total
8 of \$5,619.85.

9 But this is not the end of the inquiry. The Court must also determine whether it would
10 be reasonable to reduce the attorney fees under the *Aguirre* rule of degree of success. *See*
11 *Aguirre*, 461 F.3d at 1118 (“[T]he level of a[n IDEA] plaintiff’s success is relevant to the
12 amount of fees to be awarded.”) (quoting *Hensley*, 461 U.S. at 430). OCHCA claims that the
13 Family only prevailed to the extent of 50% of the requested monetary relief because although
14 Parents were reimbursed for placement at Waterfall, they were denied reimbursement for
15 Safeguard and Aspen. (OCHCA Reply at 21:5-12.) The *Aguirre* court noted that the degree of
16 success test “will help to deter parties (or their lawyers) from adding frivolous claims that
17 exacerbate disputes and strain the resources of both parents and school districts. . . . It is
18 understandable that without cost considerations, parents facing litigation would bring as many
19 claims as possible, hoping to secure a larger share of the district’s resources.” *Aguirre*, 461
20 F.3d at 1120.

21 The Court finds that it is reasonable to reduce the fees because of the Family’s limited
22 success at the Due Process hearing and this appeal. The Family did not receive full monetary
23 relief and Student was denied prospective placement at Waterfall. Still, the Family
24 demonstrated a higher degree of success than OCHCA’s 50% proposal because the ALJ and
25 this Court determined that Student was denied a FAPE. In balancing the small monetary relief
26 against the finding that FAPE was denied, the Court finds that a reduction of 30% is appropriate
27 here, resulting in an award of 70% of the \$36,000 lodestar calculation. $\$36,000 \times 70\% =$
28 \$25,200.

1
2 5.3.2 Attorney Fees for Current Matter
3

4 The Family also claims they are entitled to \$80,344.18 in attorney fees related to the
5 current matter, as of September 12, 2011. It appears that this amount consists primarily of
6 176.7 attorney hours with a rate of \$450. (Loyer Supp. Decl. at 2.) As noted, the Court finds
7 this rate to be excessive and will instead use counsel's initial rate of \$300 per hour to determine
8 appropriate attorney fees. Given the quantity and quality of the work produced, the Court finds
9 176.7 attorney hours also to be unreasonable. This conclusion is supported by excessive billing
10 entries such as five hours for a Federal Court appearance (Family's Brief Ex. B at 22 of 24),
11 and four hours for revising a brief (*Id.* at 24 of 24) that as submitted contains a copious amount
12 of basic grammatical mistakes. These grammatical mistakes come on top of spelling errors and
13 the already noted mathematical error.

14 Thus, the Court finds that the Family are entitled to an award of \$27,000 (\$300 x 90
15 hours) for attorney work on the current action through September 12, 2011.
16

17 **DISPOSITION**
18

19 The ALJ's decision is AFFIRMED in its entirety.

20 The Court GRANTS an award of attorney fees to the Family in the amount of
21 \$30,819.85 for prevailing at the Due Process hearing. The Court GRANTS an award of
22 attorney fees in the amount of \$27,000 to the Family for the current matter. Thus, the Court
23 GRANTS a total award of attorney fees through September 12, 2011 of \$57,819.85 to the
24 //
25 //
26 //

1 Family. If the Family wishes to request attorney fees for the period after September 12, 2011,
2 they should file a timely motion and request reasonable fees in line with this order.

3
4
5
6 IT IS SO ORDERED.

7 DATED: March 30, 2012



Andrew J. Guilford
United States District Judge

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