

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015010181

DECISION

Parents, on behalf of Student, filed a first amended due process hearing request with the Office of Administrative Hearings on February 23, 2015, naming the San Mateo Union High School District. The matter was continued on March 27, 2015, at the request of the parties.

Administrative Law Judge Charles Marson heard this matter in San Mateo, California, on July 21, 22, and 23, and August 19, 2015.

Susan Foley, Attorney at Law, appeared on behalf of Student and was assisted by paralegal Sonia Melgoza. Student's Parents attended each day of the hearing. Student did not attend.

Timothy J. Fox, Attorney at Law, appeared on behalf of San Mateo. Gloria Dirkmaat, San Mateo's Director of Special Education, attended the hearing on behalf of San Mateo.

On July 23, 2015, the matter was continued to August 19, 2015, for further hearing, and then continued to September 14, 2015, for closing arguments. On that day the record was closed and the matter was submitted for decision.

ISSUES¹

1. Whether San Mateo denied Student a free appropriate public education during the 2014-2015 school year, beginning August 11, 2014, by failing to offer education programs that included a low student-to-teacher ratio, a small campus, on-site therapeutic mental health staff, and a residential setting, in the individualized education programs of (a) July 1, 2014; (b) September 4, 2014; and (c) October 2, 2014?

2. Whether San Mateo denied Student a FAPE, from January 16, 2015, through the end of the 2014-2015 school year, by:

- a. Failing to make a clear and concise IEP offer with regard to a start date;
- b. Failing to make a clear and concise offer of related services with regard to the frequency and duration of speech and language therapy services;
- c. Failing to make a clear and concise offer with regard to mental health services;
- d. Failing to offer an actual classroom;
- e. Failing to offer a credentialed teacher;
- f. Offering a shortened school day; and
- g. Failing to offer an IEP placement that would meet his needs for a low student-to-teacher ratio, a small campus, on-site therapeutic mental health staff, and a residential setting?

SUMMARY OF DECISION

This decision holds that San Mateo's combined offers on October 2, 2014, and January 16, 2015, would not have provided Student a FAPE because they were unduly vague in describing the mental health support he would receive, and because they proposed a method for regulating Student's behavior that had already failed in three schools and was unlikely to succeed in a fourth. It also holds that, by January 16, 2015, Student could no

¹ The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

longer adequately be served in a day school and needed a residential placement to receive a FAPE. It therefore awards Parents reimbursements for their expenses in providing Student a residential placement, and continues that placement to the conclusion of Student's one-year treatment plan on March 26, 2016.

FACTUAL FINDINGS

Background and Jurisdiction

1. Student is a 16-year-old male who resides with Parents within the boundaries of the San Mateo Union High School District. He is eligible for special education and related services primarily in the category of other health impaired, and secondarily because of autism. He is highly intelligent and musically talented, but is unable to control his frequent misbehavior in the school environment with peers and adults.

2. On October 2, 2014, San Mateo made an offer of placement to Student, which was amended on January 16, 2015, to propose placement at the Oak Hill School, a private therapeutic day school in San Anselmo, California. Parents declined the offer and, in February 2015, placed Student in the residential program of the Monarch Center for Autism in Cleveland, Ohio, and in its Monarch Day School, which specializes in serving autistic children. Student has been there since. Parents then brought this complaint for reimbursement and future placement at Monarch.

Development of Student's Behavioral Difficulties and Behavioral Supports

3. Evaluating Student's IEP's requires an understanding of the way his behavioral difficulties, and the responses of his schools, have developed over time. Student's behavior problems were apparent early in his education in the Burlingame Elementary School District. His March 2011 fifth grade behavior plan reported that he was off task, called out in class without raising his hand, walked around the room and picked at classroom furniture or supplies. His need for a behavior plan was rated "moderate"; the plan required that he be given "a quiet place to calm himself" outside of class and "[w]hen [Student] is calmed," he could return to class. There is no mention in the fifth grade plan of any violence toward others.

4. By the time Student was in seventh grade at Burlingame Intermediate School, in the school year 2012-2013, the technique of removing him from class when he misbehaved was increasing his frustration and making him defiant. His need for a behavior plan was rated "serious," and his new seventh grade behavior plan provided for a designated quiet area where he was required to remain with his aide until "calm behaviors allow him to re-enter the classroom." However, that year he became physically aggressive toward his peers between one and five times a week, and sometimes toward adults. He was suspended twice as a result of these incidents, and once the school called the police.

5. For Student's eighth grade year, in the 2013-2014 school year, Student's IEP team placed him in Esther B. Clark School, a non-public school in Palo Alto operated by the Children's Health Council for emotionally disturbed and autistic students. Student did well academically at Esther B. Clark, as he had before, but his verbally and physically aggressive behaviors continued to interfere substantially with his education and that of others. He became enraged when his work was criticized or graded down. He was unable to form positive relationships with peers or adults. He defied adult directions; interrupted and yelled at other students and teachers in class, denouncing them as "stupid" and "losers"; shouted out answers when not called upon; took other students' property; and engaged in verbal conflicts that frequently became physical conflicts in which he attacked students or staff. His behaviors became so severe that, in December 2013, his IEP team reduced his school attendance to half a day.

6. Esther B. Clark also gave Student a "quiet room," a separate space in which to do academic work. Starting in February 2014, it administered a behavior support plan that required him to spend most of his time alone there with an aide, away from class and his peers. He had to "earn" his way back into class in increments by displaying safe behaviors. He was accompanied by a staff member everywhere, even to the bathroom, and was required to eat lunch with staff.

7. Student's triennial IEP team meeting was held on February 28, 2014. The IEP document states that his behaviors "prevent him from consistently accessing the general classroom setting at EBC." Even with a half day schedule, he could tolerate little time in class. A triennial psychoeducational assessment reported that he was "able to successfully engage in the classroom environment for approximately 45 minutes of the day. Otherwise, he is working in a 1:1 setting (and goes home at 12:30 p.m.)." By the end of eighth grade, Student was still on a half day schedule and was spending very little time in class due to his misbehavior when there.

8. By the end of Student's eighth grade year, both Esther B. Clark and Parents believed he needed a new placement. An employee of Esther B. Clark privately told Gloria Dirkmaat, San Mateo's Director of Special Education, that Esther B. Clark had done as much with Student as it could do.² Meanwhile, Mother became involved in a campaign to create

² Ms. Dirkmaat has a bachelor's degree in elementary education from Brigham Young University, a master's in learning disabilities from San Jose State University, and administrative services credentials from the University of San Francisco and National University in San Jose. She also has special education and multiple subject teaching credentials, and an extensive background in teaching both special and general education students. From 1998 to 2006 she was variously a Mentor Teacher in special education, a special day class teacher, and the Director of Special Education at Campbell Union School District. From 2006 to 2009 she was Coordinator of Student Services at Fremont Union High School District. She has been San Mateo's Director of Special Education since 2009.

Design Tech High School (D-Tech), a new charter school in the district that would specialize in project-based learning, and was eager to send Student there. D-Tech was chartered in 2014 by San Mateo, which during the 2014-2015 school year was legally responsible for it, including all its special education. D-Tech obtained a site on the campus of San Mateo's Mills High School.

9. Parents won a lottery for a space for Student at D-Tech. On July 1, 2014, Student's IEP team decided to move him to D-Tech for a trial period of 30 days. The July 1, 2014 amendment IEP placed Student in general education classes at D-Tech, but still for a shortened school day. Since the new placement amended Student's existing IEP, the Esther B. Clark behavior plan remained in effect.

10. Student began classes at D-Tech in August, and did so well for the first three weeks that, on September 4, 2014, the IEP team agreed by an amendment to the IEP, without a meeting, to extend his time at school to a full day. The amendment reported that "[Student's] behavioral needs have been met in the general education classroom with support."

11. However, during September 2014, Student's behavior at D-Tech seriously regressed. He pinched two students and a teacher, frequently yelled or spoke in a loud voice, interrupted teachers and other students, rejected feedback from staff, and touched other students and their property out of anger. He wandered around the classroom. When he became anxious in conversations, he lapsed into verbose technical scientific jargon unrelated to the topic for as much as 40 seconds at a time. He averaged one to five incidents of physical aggression toward peers a week, posturing at students, swinging objects, and destroying other students' work. He also charged peers, attempting to hit or kick them, and sometimes succeeded. His one-to-one aide regularly took him out of class because of disruptive behaviors. Although Student's IEP placed him in general education classes 99 percent of the time, he could only tolerate being in a general education classroom about 30 to 40 percent of the time, and spent the rest alone in an independent work area set aside for him.

12. On September 29, 2014, Student was suspended for misconduct on a baseball field that D-Tech shared with Mills High School. Student had been using the field for running, an activity D-Tech encouraged because it calmed him, and had come to view the field as his own for that purpose. He became enraged when he saw students from Mills High School on the field. He picked up their ball, threw it at one of them, put up his fists, charged the Mills physical education instructor, and swung at him, grazing his arm. He then threw a bat and threw the home plate. Student had to be restrained and removed from the field. D-Tech suspended Student and reported the incident to police as an assault on a school employee.

The October 2, 2014 IEP Team Meeting and Offer

13. Because of Student's suspension and his earlier difficulties behaving in class, D-Tech convened an IEP team meeting on October 2, 2014, to review and revise Student's behavior support plan. The notes of the meeting addressed his suspension and stated that Student "was spending less and less time in the classroom recently" They also reported that his frequent removal from class "often increases his frustration." During the meeting, D-Tech staff proposed a new behavior plan similar to the one that had been in effect at Esther B. Clark and earlier at D-Tech. Mills High School was clearing out an office at the end of a hall for his use as a quiet room. Student would start out his day alone, spend most of his time in his quiet room with an aide, and obtain points to "earn" his way back into class by behaving properly. Student would be sent home for the day if he engaged in one incident of physical aggression or two incidents of verbal aggression, such as using a loud voice in class when told not to.

14. At hearing Ms. Dirkmaat was asked whether placing "a student with autism" in isolation, hoping he would earn his way back into the classroom, was an "available" strategy. Ms. Dirkmaat responded, "Yes," and opined that the desire to return to the classroom is "usually is a good motivation." The question and answer were not specific to Student. No other professional addressed the usefulness of the method in general, and no one addressed its wisdom for Student in particular. The evidence showed that this behavioral intervention isolated Student and provided a reprieve for others in his classrooms. There was no evidence that the intervention decreased the incidence or intensity of his misbehaviors, improved his self-control, or motivated him to return to group instruction behaving better.

15. At the October 2, 2014 IEP team meeting, Mother protested the plan to isolate Student and require him to earn points to entitle him to return to class. The meeting notes report that "[t]he previous BIP [behavior intervention plan] was revised based on [Mother's] objection," but does not state how it was revised. At the end of the meeting it was agreed that a new behavior plan would be drafted and added to the IEP, but this never occurred. There was no evidence that the new behavior plan discussed, modified, and agreed to at the October 2, 2014 meeting has ever existed in written form.

16. Instead, D-Tech mistakenly included in the IEP document from October 2, 2014, two obsolete behavior plans from Student's time in the Burlington Elementary School District. The first was dated March 16, 2011, during his fifth grade year. The second was dated October 17, 2012, early in his seventh grade year. Sarah Krummel, D-Tech's associate director and Student's case manager, was in charge of his IEP process on October 2, 2014.³

³ Ms. Krummel oversees the special education program at D-Tech. She has been working in special education for 10 years and has experience with autistic children. Otherwise, her credentials are not part of the record.

She opened the District's database and brought up the obsolete behavior plans, intending to edit them into a new one to reflect changes decided upon at the October 2, 2014 meeting. By mistake, the old behavior plans were "affirmed" in the database without change and made part of the October 2, 2014 IEP offer. Ms. Krummel agreed that the 2011 and 2012 behavior plans constituted part of the official IEP offer from that meeting. Those behavior plans were obsolete because they were designed for elementary school, had not been successful, and addressed behaviors that had significantly worsened since. They had no reasonable application to Student's behaviors in October 2014 or later.

17. The October 2, 2014 meeting produced an entirely new IEP offer. It proposed to reduce Student's time in general education from 99 percent of his school day to 75 percent. It offered related services, including one 30-minute group session every week of speech and language therapy, with a start date of August 11, 2014, and an end date of March 15, 2015. It did not offer occupational therapy.

18. The October 2, 2014 IEP did not offer any kind of mental health support, and the document does not explain that omission. Testimony showed that mental health support was omitted because the San Mateo members of the IEP team assumed that Parents preferred private mental health therapy to the counseling the school could provide. Student's triennial IEP had provided counseling to Student for 60 minutes a week, but the July 1, 2014 IEP amendment omitted mental health services. The July 1 document notes that "Student receives private counseling," and Ms. Dirkmaat established that at the July 1 meeting, Parents "declined an assessment" for mental health because they preferred private counseling. There was no evidence that this assumption was further discussed at the October 2, 2014, IEP team meeting, or that it was still correct.

19. Parents did not agree to the October 2, 2014 offer. Student attended D-Tech for a few more days, spending most of the time in his quiet room with his aide. On October 13, 2014, his behavior deteriorated so much that the aide threatened to call Mother. This made Student more anxious, and a teacher was summoned. Student reached for the teacher's cell phone, apparently to make a call, and pinned the teacher's arm to the wall. He was then sent home. After this new incident Mother, Ms. Krummel, and a Mills High School resource officer met to discuss Student's most recent misbehavior. The Mills resource officer stated that if Student's behavior were repeated, the school would seek his commitment for 72 hours under section 5150 of the Welfare and Institutions Code.

20. Fearing that Student would be involuntarily committed, or reported again to the police, Mother did not permit Student to return to class at D-Tech. He spent the rest of the semester working on his class materials at home, and appearing on campus an hour a week for meetings with teachers after school hours. At these meetings, he was always accompanied by Mother, because his teachers were uncomfortable being alone with him.

21. Ms. Krummel believed that since Student got good grades at D-Tech in the subjects he took, and got credit for his courses toward a diploma, he could access the general education curriculum. Mother confirmed that Student received credit for all his courses, although after October 13, 2014, he did so by studying at home with her help. Ms. Krummel also opined that Student benefited socially from attending D-Tech. Asked to give examples, she stated that he “interacted” with people at lunch, although she did not say how successful those interactions were, and that he attempted to form a bird club, which he announced at a general assembly. However, to Ms. Krummel’s knowledge, no one joined the club. There was no evidence that Student had any friends at school.

22. On October 28, 2014, Parents notified San Mateo that they were searching for a private placement for Student and intended to seek reimbursement for the placement from the district. During the late fall, Parents investigated several possible placements in their geographical area, but were unable to find one they thought was appropriate for Student. They asked San Mateo to place Student at Monarch, but San Mateo was unwilling to do so.

The January 16, 2015 IEP Team Meeting and Amended Offer

23. At an IEP team meeting on January 16, 2015, San Mateo substantially amended its October 2, 2014 IEP offer by proposing to place Student for 30 days in the Oak Hill School in San Anselmo, a private therapeutic day school for autistic children certified by the State. The single-page IEP document from January 16, 2015, proposing to place Student at Oak Hill (the January offer) is clearly labeled as an amendment to the October 2, 2014 IEP (the October offer), not a new IEP. The October offer must be considered as included in the January offer, unless the January document clearly contradicted it.⁴ The October offer was written to expire on March 1, 2015, when Student’s annual IEP team meeting would be held. This period coincided with the “30 day review to look at services” offered in the January document.

24. The January offer did not mention related services except in the phrase: “Individual therapy two or more times a week, speech language assessment, OT assessment, online a-g curriculum, transportation, 1:1 aide, SAI for 100% of the day . . .”.⁵ However, the

⁴ At a January 21, 2015 telephonic continuation of the January 16, 2015 meeting, Mother and Oak Hill staff discussed Student’s proposed program at Oak Hill in more detail. San Mateo introduced in evidence a half-page document memorializing this conversation, but the document was not provided to Parents until shortly before the hearing. San Mateo agreed at the hearing that the January 21, 2015 telephone notes did not constitute part of the written January 15, 2015 IEP offer.

⁵ The evidence showed that “OT” meant occupational therapy; “a-g curriculum” was a curriculum that satisfied the requirements for admission to the University of California system; and “SAI” meant specialized academic instruction. The parties understood that, under the January offer, Student would be transported every day from Parents’ residence in Burlingame to San Anselmo and back by taxicab.

October offer provided for group speech and language therapy for “30 min 1 x Totaling 30 min served Weekly.” This clearly offered 30 minutes a week of group speech therapy, and was not contradicted or replaced by anything in the January offer, which merely added that “speech language assessment” and “speech and language . . . would also be available.”

25. The October offer provided for a one-to-one instructional aide at D-Tech for 2250 minutes a week. A one-to-one aide at D-Tech was not a mental health professional.

26. The January offer added that, at Oak Hill, there would be “psych services”; that the primary focus during transition to Oak Hill would be “mood regulation”; and that the “[t]herapist uses a variety of techniques to help [Student] regulate . . .” The document does not elaborate further on those services. Its reference to “[i]ndividual therapy two or more times a week” could have been to mental health services, or speech and language therapy, or occupational therapy; there is no way to tell from the January offer.

27. Neither the October offer nor the January amendment expressly addressed the proposed length of Student’s school day. However, from the September 2014 IEP amendment until Mother withdrew him, Student attended D-Tech for a full day, and nothing in the October offer proposed to change that.⁶ In addition, the 2250 minutes a week for a one-to-one aide proposed in October assumes a school day of approximately seven and one half hours. The combined offers therefore proposed that Student attend a full school day.

28. During this period, the most important issue to Parents, in evaluating San Mateo’s offers, was whether Student would be permitted in a classroom with other students, under what conditions, and for how long. Parents objected to a system in which Student had to stay in a separate room and earn his way back into the classroom.

29. The January offer was not entirely clear in stating how much time Student would spend in class with his classmates at Oak Hill, or under what conditions he would be permitted to enter or stay in it. However, the most reasonable reading of the January offer, and the way Parents understood it, was that Student would start out at Oak Hill, isolated in his own room, and allowed into the classroom only if and when Oak Hill staff decided he could be there. A paragraph containing the January offer states:

District’s offer of FAPE is Oak Hill with a 30-day review to look at services, present levels, and develop a transition plan into the general education classroom. Individual therapy two or more times a week, speech language

⁶ The arrangement by which Student studied at home after October 13, 2015, was not made part of any IEP.

assessment, OT assessment, online a-g curriculum, transportation, 1:1 aide, SAI for 100% of the day with the goal of moving [Student] into the general classroom 100% of the time. Ms. Dirkmaat offered wraparound home services if needed.

30. Michael Breard, Oak Hill’s assistant director, attended the January 16, 2015 IEP team meeting. The written January offer summarized his contribution as follows:

Oak Hill shared how they would structure [Student’s] program. He would start with his own classroom with one to one aide and a teacher would program the curriculum. He would be close to the classroom he would be transitioned into

31. Mr. Breard testified at hearing that he envisioned that Student, if he came to Oak Hill pursuant to the January 2015 offer, would start out in his separate room, with an aide. He would have an online curriculum prepared or selected or provided by the classroom teacher, but would not immediately join his classmates. Instead, when Student was sufficiently stable, Oak Hill staff would look for opportunities to insert him briefly into the classroom at times that were least stressful or anxiety-provoking, perhaps at first during lunch or break times. He would eventually be fully integrated into the classroom. This description was consistent with the text of the January offer. The summary description of the “District’s offer of FAPE” also supports this interpretation in its mention of online curriculum that the teacher would “program,” and “SAI [specialized academic instruction] for 100% of the day.”

32. Ms. Dirkmaat testified that she envisioned Student starting out at Oak Hill in the classroom with his peers, but predicted he would quickly be removed and otherwise would be managed in the general way Mr. Breard described. There is no textual support in the offer for the view that Student would start out in a classroom with other Students.

33. Parents declined the offer of placement at Oak Hill. Instead, on February 25, 2015, they enrolled Student in the residential program at Monarch.

Student’s Need for a Residential Placement

34. Student presented five professional witnesses who testified that, at the time relevant here, he needed a residential placement, not a day school. Jeanne Loveland, a well-credentialed licensed clinical social worker, began providing counseling to Student and his

family during his transition from Esther B. Clark to D-Tech.⁷ Her sessions with him, joined sometimes by Mother, were after school, and almost all her discussions and work with Student involved his difficulties at school.

35. Ms. Loveland was a persuasive witness whose extensive experience with autistic students, some of them violent, helpfully informed her perspective. She was very familiar with Student, careful and measured in her testimony, and did not overstate. Cross-examination exposed no substantial flaws in her testimony. Her testimony is therefore given substantial weight.

36. Ms. Loveland realized that Student disrupted his classes because he was so eager to talk and relate to others, so she would model with him possible responses to situations in class. Her therapy was making some progress until he started at D-Tech in fall 2014; then he started getting worse. As his stress increased, his behavior deteriorated. His agitation increased over the months she saw him. Over the course of his treatment, Ms. Loveland also observed that it was increasingly difficult for the family to keep him calm, due in part to his age and adolescence.

37. On December 19, 2014, Ms. Loveland wrote a recommendation to San Mateo in which she opined that Student had not benefited at Esther B. Clark and was not benefiting at D-Tech, which lacked the professional mental health services he needed. He frightened staff and students alike because he would erupt with little or no apparent provocation and become physically aggressive. “It is clear to me,” she wrote, “that [Student] requires a residential program where he can receive and benefit from a challenging academic program while he is immersed and surrounded by trained professionals to teach him alternative behaviors in important social situations at home and in a school setting.” At present, she concluded, he was “unable to behave appropriately in his home and school environment until he learns how to better control his aggressive impulses.” She also concluded that outpatient therapy was insufficient for this purpose; the required interventions “cannot be carried out in a family home, outpatient setting or day treatment setting.” He needed professional help around the clock. She also expressed fears for the safety of his family.

⁷ Ms. Loveland has a master’s degree in social work from Smith College, and a bachelor’s degree from San Francisco State College. She received two years of post-graduate training at the Children’s Health Council in Palo Alto, including working as a therapist at Esther B. Clark. She has been a counselor at several schools, a clinical social worker at Children’s Hospital at Stanford, and the assistant director of adolescents’ and children’s services at Family Service Mid-Peninsula in Palo Alto. Ms. Loveland has been in private practice as a counselor and psychotherapist to children with autism, anxiety, and other disabilities in Menlo Park since 1993.

38. At hearing Ms. Loveland confirmed these opinions, and, to illustrate her concerns about the safety of Student's family, described an incident in her office during Student's attendance at D-Tech. Student arrived so agitated from an incident at school that, in the outer office, he shoved and hit his Mother, and hit his sister. Mother had warned Ms. Loveland briefly about Student's condition, but as soon as Ms. Loveland mentioned the school incident in her office, Student struck her with the back of his hand. He was not angry at her or his family, and was later remorseful; his frustration and anger from the incident at school were simply beyond his control. Mother had informed Ms. Loveland that Student had hit her at home on some occasions.

39. Ms. Loveland was also concerned for the safety of others. Student was unable to "put himself in anyone else's shoes or perspective" due to his impulsivity and lack of awareness or social concern for others. He would explode when contradicted or criticized. In her view, only residential treatment with around-the-clock support could adequately address these problems.⁸

40. Student also presented the testimony of Dr. Wesley Dunn, a well-qualified child, adolescent, and adult psychiatrist in Burlingame.⁹ Dr. Dunn has been Student's psychiatrist since July 2013, before Student went to Esther B. Clark. Dr. Dunn primarily has managed his medications, but also has coordinated his treatment with Ms. Loveland.

41. Dr. Dunn was also a persuasive witness. He was well qualified to opine on Student's needs and demonstrated considerable familiarity with Student's condition. He was careful in stating the limitations on his opinions and candid on cross-examination, which did not reveal any reason to doubt his analysis. His testimony is also given substantial weight here.

⁸ On cross-examination Ms. Loveland stated that a local day program would have been "worth a try" if a suitable one existed, but Parents had been unable to locate one. San Mateo's counsel did not inquire further into the meaning of this statement, which by itself did not undermine the detailed opinions Ms. Loveland stated on direct examination.

⁹ Dr. Dunn has a bachelor's degree from Pomona College and an M.D. from Loma Linda University School of Medicine. From 2002 to 2005 he was a San Mateo County psychiatry resident, and from 2005 to 2007 he held a fellowship in child and adolescent psychiatry at Stanford University, where he graduated as Chief Fellow. He has been a consulting psychiatrist at San Mateo County's psychiatric emergency room and at the San Mateo County Jail. He has also been an investigator for the National Institute of Mental Health, and the medical director of children's services at Richmond Area Multi-Services, Inc., a non-profit mental health agency in San Francisco. He has made numerous presentations and has received several professional honors. He has been in private practice since 2007.

42. On December 16, 2014, Dr. Dunn wrote a recommendation to San Mateo pointing out that Student had not been successful at regular mainstream schools, and stating that he needed a residential educational placement to benefit from his education. Dr. Dunn expanded on this opinion at hearing, explaining that Student would not be able to benefit educationally unless he had consistency in his behavioral program between home and school settings. As with many autistic students, Student was very rigid and needed to have things “a certain way”; if he received mixed signals, or there were discrepancies in behavioral management between home and school, the differences could be anxiety-producing and overwhelming, and would rob him of focus and prevent him from being productive at school.

43. Dr. Dunn recognized that not all autistic students need a residential program to achieve consistency between home and school, but believed that Student did because of the severity of his symptoms. In addition, Dr. Dunn was familiar with Esther B. Clark and has had patients with autism there. He contacted Student’s behaviorist at Esther B. Clark and learned that both the school and Parents had made extensive efforts to coordinate behavioral management between home and school, but those efforts were ultimately unsuccessful. He observed that it is “very difficult” for parents to implement in the home the sort of complex program of rewards and incentives Esther B. Clark was using at school.

44. Dr. Dunn observed that Student was doing well at Monarch. On cross-examination, Dr. Dunn was asked whether a few incidents reported in Monarch records of violence by Student that required physical restraint undermined his opinion that Student was doing well there. He responded that it would not.

45. In contrast to Student, San Mateo did not present any witness at hearing who testified forthrightly that Student did not need a residential program by January 2015. Ms. Dirkmaat’s statement that the Oak Hill placement offered Student a FAPE, and perhaps also Mr. Breard’s statement that Oak Hill was “able to serve” Student, indicate that San Mateo believed that a day treatment program was appropriate for Student. But neither witness explicitly offered the opinion that Student did not need a residential placement, and neither described any facts or reasoning that would support such an opinion. Ms. Dirkmaat established that San Mateo was not looking at residential placements during the period at issue because all local options had not been eliminated.

46. Together, the opinions of Ms. Loveland and Dr. Dunn constituted substantial and persuasive evidence that Student needed a residential placement by January 2015. San Mateo did not introduce any substantial evidence that he did not. The preponderance of the evidence therefore established that, by January 2015, Student needed a residential placement to receive a FAPE. This finding is further supported by the testimony described below of three witnesses from Monarch whose evaluations of Student’s need for residential treatment were part of their opinions that he was appropriately placed and making progress there.

Student's Program and Progress at Monarch

47. Monarch is certified as a non-public school by the California Department of Education. Shortly after his arrival at Monarch on February 25, 2015, Student was given a functional behavior assessment, and on March 27, 2015, he was given a behavior plan and a one-year individualized service plan, which is similar to an IEP. The plan expires on March 26, 2016. While at Monarch, Student has received 30 minutes of direct speech therapy five times a week and occupational therapy once a week. He participates in a social skills group, and has behavioral and mental health support 24 hours a day.

48. Student's term at Monarch has not been without difficulties. He has been unable so far to take a physical education course because it is too competitive for him. He still displays physical aggression about every other day, and still takes frequent breaks outside of class. After a visit home at Memorial Day, Student became physically aggressive in his residential unit three times in June and had to be physically restrained. Monarch staff attributed this to homesickness. However, Student has also made substantial progress at Monarch.

49. Debra Mandell is a licensed occupational therapist who has been the director of Monarch School since 2000.¹⁰ She established that Monarch has about 125 students, of whom 16 or 17 are of high school age. Student is in a classroom with 7 or 8 other students, a teacher, a speech language pathologist, and three associate teachers. He receives instruction in 45 minute segments including social skills, science, social studies, English, math, language arts, and therapy through art, music, and recreation. Monarch gives participation grades that are translated by home districts into their own grading system. Monarch also works with each student's school district to make sure that the student receives the courses required to receive a diploma from the home district. Student is on the high school diploma track.

50. Student manages to attend a full school day at Monarch in a classroom with other students, from 8:30 a.m. to 2:45 p.m., although he takes frequent breaks outside the classroom. The residential component of his program is overseen by a team consisting of a supervisor in his cottage, a case manager, and a counselor. The staff from the school and the residence meet frequently to coordinate their programs. Ms. Mandell keeps track of Student through conversations with both groups.

¹⁰ Ms. Mandell has a bachelor's degree from the University of Pennsylvania and a master's degree in health administration from Saint Joseph's University in Philadelphia. She began work as a certified occupational therapist in 1977, became the graduate program coordinator for United Cerebral Palsy in New York in 1979, and then spent 10 years as the program director of the Child Development Center at Cooper Hospital University Medical Center in Camden, New Jersey.

51. Ms. Mandell does not teach Student, but she encounters him almost every day. She has seen him make social progress; he is more tolerant of feedback and handles criticism better, and is more interested and involved in social engagement with peers and adults. He seems happier than when he arrived. His social exchanges have become more appropriate, and he has begun to correct the technical jargon that characterizes his anxious conversation. His peers now understand him better. From Student's academic progress reports, Ms. Mandell has learned that his organizing of his writing and his ability to express himself on paper have improved. He needs and benefits from the small class size, high ratio of adults to students, and available therapy.

52. Ms. Mandell also opined that Student needs the residential component of his placement to benefit educationally because his behaviors have impeded his education in previous placements where he was not successful. Without "24/7" intervention she doubts he would make educational progress; he needs a comprehensive program. She believes his residential placement at Monarch is appropriate.

53. Monica Fisher is Student's classroom teacher at Monarch.¹¹ She has seen him make progress socially; he socializes with his peers at lunch in the classroom and sometimes brings comics to share with them. He now has a few peers who are friends. Student has also made academic progress. He works on his IEP goals from 10:30 a.m. until noon. He is compliant and pays attention to work 80 to 100 percent of his time in class, is doing well in geometry, and scored among the highest in his class on English tests. He has also made progress on his behavioral goals, and participates better in class than when he arrived.

54. Ms. Fisher also established that Monarch provides a curriculum used in Ohio's public schools. It is very similar to California curriculum and designed around Common Core. Monarch leaves diplomas to its students' home districts, but Ms. Fisher makes sure that her lessons for Student are aligned with California standards for graduation.

55. Ashley Brigeman is the speech-language pathologist who serves Student at Monarch.¹² She meets him five times a week for 30-minute sessions, and has seen him make progress. His exchange of information with others is less egocentric, he takes a greater

¹¹ Ms. Fisher has a bachelor's degree from the College of Wooster and a master's in education, curriculum, and instruction from Cleveland State University. She is a board certified behavior analyst, a behavioral consultant, a trainer in applied behavior analysis, and a supervisory intervention specialist at Monarch.

¹² Ms. Brigeman has both a bachelor's degree in science and a master's degree in speech pathology from Kent State University. She is licensed as a speech-language pathologist in Ohio, and has substantial experience with autistic children. She began work at Monarch in February 2015.

interest in others, and he forges relationship with peers and engages better with them. He has made good progress on the technical jargon he still uses. He is able to identify a few peers as his friends. Ms. Brigeman believes that Student needs to be educated as part of a residential program because his pervasive behaviors require around the clock supervision in order to provide consistency in his behavioral treatment. When he has conflicts with one of his roommates, he is able to work through those behaviors with staff in real time.

56. Stacy Cianciolo is Monarch's behavioral supervisor.¹³ She supervised Student's functional behavior assessment and helped his program manager develop his behavior plan. She visits and assists him in class. She has seen Student's desire to change his behavior increase, and has noticed progress in his relationship with others. His physical aggressions are decreasing in number. He is learning to walk away from tense situations and is less verbally aggressive. He has become more receptive to intervention. Student's residential program benefits him during the school day because it provides consistent interventions, allows the effects of those interventions to carry over into the school day, and assures his presence at school.

San Mateo's Criticisms of Monarch as a Placement

57. At hearing, Ms. Dirkmaat opined that placement at Oak Hill was "superior" for Student to placement at Monarch. Two or three years ago, a representative of Monarch visited her, described its programs, and left literature. Ms. Dirkmaat also studied Monarch's web site to compare it to Oak Hill. From those experiences, Ms. Dirkmaat developed three concerns. First, she was concerned about the rigor of Monarch's curriculum. It seemed to her to be centered on life skills. She could not find anything on Monarch's web site concerning its curriculum except that it met Ohio's standards. She could not tell from the web site description how rigorous the curriculum was.

¹³ Ms. Cianciolo has a bachelor's degree in psychology from Cleveland State University and a master's degree in educational psychology from John Carroll University. She was certified in 2008 as a board certified behavior analyst (BCBA). She is an adjunct professor at Kent State University, where she teaches applied behavior analysis and helps students obtain their BCBA certifications. Ms. Cianciolo began working at Monarch in 2001 as a teacher, and later became its early childhood supervisor. In her current position, which she attained in 2010, she supervises Monarch's behavior specialists and BCBA candidates, oversees functional behavior assessments, trains school staff, and provides direct therapy to students and parents.

58. A second concern was that the “therapeutic piece” seemed to be “more behavioral.” Ms. Dirkmaat did not elaborate on that statement. Third, Monarch was far from Student’s home, making it difficult for its therapists to work with the family. Oak Hill, on the other hand, left Student in his home, where “wraparound” home services could be provided if needed.¹⁴

59. Many of Ms. Dirkmaat’s concerns about Monarch appeared to be based on her unfamiliarity with it, and her confidence in Oak Hill based on her experience with it. Ms. Dirkmaat was familiar with Oak Hill and had previously placed students there. Two of San Mateo’s students who had behavior profiles similar to Student’s are now at Oak Hill, and have greatly improved. Ms. Dirkmaat was familiar with the rigor of Oak Hill’s curriculum and confident that, with an Oak Hill placement, San Mateo could ensure that Student received acceptable college credits. Her impression was that at Oak Hill there were more “community and real life” opportunities than at Monarch.

60. The weight of evidence, as provided by the testimony by Ms. Fisher and Ms. Mandell, showed that Student is receiving college preparatory courses at Monarch and is on a diploma track. Ms. Dirkmaat’s concerns were based upon impressions from a web site and from a vaguely remembered conversation approximately two years ago, while Ms. Fisher and Ms. Mandell were speaking from current personal knowledge specifically about Student. In addition, Ms. Dirkmaat’s impressions that Monarch was not sufficiently rigorous academically and concentrated primarily on life skills was not supported by any other evidence, such as materials from Monarch’s web site or literature, and was therefore not persuasive. The courses that Student is taking, as described by his teacher Ms. Fisher, appear to be college preparatory courses rather than life skills training.

Parents’ Expenses for Monarch

61. Parents introduced several financial documents at hearing showing the expenses they have incurred in placing Student at Monarch. The most reliable of these were invoices and credit card payment slips proving that, by the time of hearing, Parents had paid Monarch \$146,397.57 for school tuition and residential services, including a \$20,000 deposit to be returned at the end of Student’s stay there or applied against unpaid invoices. The documentation also established that Parents spent \$2,115.98 on hotels, \$1,378.40 on airfare, \$411.67 on rental cars, and \$605.00 on Bodin Educational Consulting Group for advice on placements.¹⁵ Parents thus proved that they spent a total of \$150,908.70 on Student’s Monarch placement prior to hearing.

¹⁴ The January 2015 IEP offer included “wraparound home services if needed.” The offer did not describe these services or state who would decide whether the services were needed, and there was no further explanation at hearing. Mother did not know what they were.

¹⁵ One page of Parents’ documentation of expenses is illegible, and its contents are not included in these totals.

LEGAL CONCLUSIONS

*Introduction: Legal Framework Under the IDEA*¹⁶

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)¹⁷ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth

¹⁶ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

¹⁷ All subsequent references to the Code of Federal Regulations are to the 2006 version.

Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387.]) By this standard, Student, as the filing party, had the burden of proof on all issues.

Consequences of Procedural Error

5. A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents’ child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Issues 2(a),(b),(c),(d), and (f): Did the October 2, 2014 IEP, as Amended on January 16, 2015, Offer Student a FAPE?

REQUIREMENT OF A CLEAR AND COHERENT IEP OFFER

6. In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, cert. denied, 513 U.S. 965 (*Union*), the Ninth Circuit held that a district is required by the IDEA to make a clear written IEP offer that parents can understand. The Court emphasized the need for rigorous compliance with this requirement:

We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist

parents in “present[ing] complaints with respect to any matter relating to the ... educational placement of the child.” (*Union School Dist. v. Smith, supra*, 15 F.3d at p. 1526, quoting 20 U.S.C. § 1415(b)(1)(E).)

7. *Union* itself involved a District’s failure to produce a formal written offer at all. However, numerous judicial decisions invalidate IEP’s that, though offered, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 769; *Bend LaPine School Dist. v. K.H.* (D. Ore., June 2, 2005, No. 04-1468) 2005 WL 1587241, p. 10; *Mill Valley Elem. School Dist. v. Eastin* (N.D. Cal., Oct. 1, 1999, No. 98-03812) 32 IDELR 140, 32 LRP 6047; see also *Marcus I. v. Department of Educ.* (D. Hawai’i, May 9, 2011, No. 10–00381) 2011 WL 1833207, pp. 1, 7-8.) One District Court described the requirement of a clear offer succinctly: *Union* requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108.)

8. The rule of *Union* extends to the statement of the frequency, location, and duration of offered services. The IDEA requires that an IEP contain a projected date for the beginning of special education services and modifications, and “the anticipated frequency, location, and duration of those services and modifications.” (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) The Ninth Circuit has observed that the length of time that an offered service will be delivered must be “stated [in an IEP] in a manner that is clear to all who are involved.” (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 953 [citation omitted].) The requirement ensures that “the level of the agency's commitment of resources” is clear to all members of the IEP team, including parents. (*Bend LaPine School Dist. v. K.H., supra*, 2005 WL 1587241 at p. 9 [citation omitted].)

ISSUE 2(A): WAS THE OFFER OF A START DATE CLEAR AND CONCISE?

9. As discussed above, the October 2, 2014 offer was expressly to expire on March 1, 2015, approximately when Student’s annual IEP team meeting was to be held. The January offer did not alter that date, and its promise of a 30-day review roughly coincided with the annual team meeting. The combined offers were thus reasonably read to propose a start date at Oak Hill at or around February 1, 2015, 30 days before the annual meeting, and therefore were clear enough to survive scrutiny under *Union, supra*. The January 16, 2015 offer adequately stated a start date.

ISSUE 2(B): WAS THE OFFER CLEAR AND CONCISE CONCERNING THE FREQUENCY AND DURATION OF SPEECH AND LANGUAGE THERAPY?

10. The October offer proposed that Student would receive one 30-minute group session every week of speech and language therapy from August 11, 2014, to March 15, 2015. This was sufficiently precise to apprise Parents of the details of that part of the offer. Nothing in the January amendment altered that part of the October offer. The combined offers therefore adequately stated the frequency and duration of speech and language therapy.

ISSUE 2(C): WAS THE OFFER OF MENTAL HEALTH SERVICES CLEAR AND CONCISE?

11. The parties agree that Student needs mental health support. In the July 1, 2014 amendment IEP, placing Student at D-Tech, it is noted that he “needs small setting with mental health and behavioral support” The January 2015 amendment offered Student “psych services” at Oak Hill, and mentions that a “therapist” would use a variety of techniques, primarily “mood regulation,” but did not otherwise elaborate on the mental health services Student would have received there. The duration of these services was adequately clear under *Union, supra*, for the same reasons as discussed above: the October offer expired on March 1, 2015 and the January offer did not change that; its 30-day review provision coincided with that expiration date.

12. However, the January offer said nothing about the nature or frequency of “psych services.” From the offer, Parents could not tell what sort of mental health professional would be delivering services, or how often, or for how long. The document’s reference to “[i]ndividual therapy” could have been to any of at least three related services. The offer of “psych services” was therefore impermissibly vague under *Union*; it did not state “the level of the agency’s commitment of resources” (*Bend LaPine School Dist. v. K.H., supra*, 2005 WL 1587241 at p. 9 [citation omitted]) and did not describe a service Parents “reasonably could evaluate and decide whether to accept or appeal.” (*Glendale Unified School Dist. v. Almasi, supra*, 122 F.Supp.2d at p. 1108.) The violation constituted a denial of FAPE because it substantially interfered with Parents’ ability to participate in the IEP process. In light of the nature of Student’s behavioral difficulties, mental health support was a central part of any acceptable program for him, but the lack of clarity and specifics in the January 2015 offer meant that Parents were unable to evaluate the nature or extent of that support.

ISSUE 2.(D): DID THE JANUARY 2015 AMENDMENT IEP FAIL TO OFFER AN ACTUAL CLASSROOM?

13. The most important dispute between the parties, from at least October 2, 2014, through Parents’ consideration of the October and January offers, was whether Student would be educated along with his peers in a classroom, or by himself in a quiet room. Part of that dispute concerned the conditions under which he would be placed in the classroom with his peers, removed from it, and restored to it. In that context, Parents’ contention that the

January 2015 IEP failed to offer “an actual classroom” must be understood to mean that the IEP failed to offer to place Student in a classroom with his peers for instruction, and that this failure denied him a FAPE.

14. The January 2015 Oak Hill offer proposed to place Student in a quiet room until he made a “transition” into a classroom with his peers, and did not state when, how, or under what conditions that transition would occur. Mr. Breard’s later testimony about how the transition would work was not part of the IEP offer and could not be evaluated by Parents at the time. However, it did confirm the most reasonable reading of the offer: that Student would start out isolated in a room with his aide, working on an online curriculum, and awaiting an unstated time at which Oak Hill staff would begin to insert him into the classroom.

15. There was no evidence that this technique – keeping Student out of the classroom until he could behave better – was appropriate for Student. No professional testified that it was. Ms. Dirkmaat’s testimony that it was an “available” technique and was “usually . . . a good motivation” was in answer to a question about “a student with autism” in general; she was not testifying about Student.

16. There was substantial evidence that this behavioral technique had been tried with Student for years and had failed. As his elementary school behavior plans show, as early as the fifth grade Student’s teachers started removing him from class until he calmed down. By seventh grade his earlier behaviors had become worse, and he had become violent toward others. He was again given a behavior plan that removed him to a quiet room until he could control himself better. However, his behavior continued to deteriorate.

17. During eighth grade at Esther B. Clark, Student’s behavior became so troublesome that his attendance was reduced to half a day, only 45 minutes of which was in class. In February 2014 he was given another behavior plan, which remained in effect while he was at D-Tech, under which he was placed in isolation with his aide until he could moderate his behavior and return to class. The result of this plan was that, by October 2, 2014, Student was attending class only 30 to 40 percent of the time, and his attendance in class was diminishing.

18. The plan contained in San Mateo’s October 2, 2014 IEP offer to confine Student to a quiet room until he could behave better was therefore not new. By this time, Student’s IEP team knew, or should have known, that isolating him in a room with an aide until he behaved better was not going to bring about the desired results. On its face the behavioral component of the October 2, 2014 IEP offer was incoherent; the team agreed to a plan modified somehow at Mother’s request, but did not write down the revised plan; and Student’s obsolete fifth and seventh grade behavior plans were attached to the IEP instead. But to the extent that the behavioral portion of the October 2, 2014 IEP team offer can be understood, it did not adequately or appropriately respond to Student’s recent behavioral difficulties. His behavior kept him out of class most of the time. He had just assaulted a Mills High School coach and was reported to the police. Less than two weeks after the new

offer, he assaulted a D-Tech teacher. After that his teachers were unwilling to meet with him alone. Simply recycling the essential method of the Esther B. Clark behavior plan did not reasonably address these behavioral challenges. Student was not likely to learn to behave better with peers and adults when he was not around them.

19. In its basic behavioral technique, San Mateo's Oak Hill offer in January 2015 was simply more of the same. Student would have been isolated in a room with an aide, studying online, until staff decided it was safe for him to join his class in small increments. Student's IEP team should have realized that this method had been tried and had failed, even at Esther B. Clark, another respected therapeutic day school. Nothing in the record suggests that Oak Hill would have done any better than Esther B. Clark using the same technique.

20. A central purpose of the IDEA was to reduce or eliminate the removal of "hard-to-handle disabled students" from classes with their peers. (*Honig v. Doe* (1988) 484 U.S. 305, 324.) The Oak Hill offer proposed to perpetuate a model for addressing Student's behavioral challenges that had been known to fail him for years, and known to isolate him for most of his school day from his peers and from adults other than his aide. The behavioral portion of the January 2015 offer was therefore not reasonably calculated to allow Student to make meaningful progress in his education. San Mateo's failure to offer him an actual classroom in which he would receive instruction among his peers denied him a FAPE.

ISSUE 2(F): DID THE JANUARY 16, 2015 AMENDMENT IEP OFFER STUDENT A SHORTENED SCHOOL DAY?

21. A student in a special class must be provided instruction for at least the same length of time as the regular school day of his chronological peer group, unless his IEP team decides he cannot function for a full day and makes such a finding in his IEP. (Cal. Code Regs., tit. 5, sec. 3053, subds. (2)(b)(2), (2)(b)(2)(B).)

22. Student's September 2014 IEP amendment specifically changed his school day from a partial to a full day. Neither the October offer nor the January amendment proposed to change that. The October offer assumed a full school day by proposing 2250 minutes a week of support by a one-to-one aide. The offers are reasonably construed as proposing that he attend a full day of school and are sufficiently specific under *Union, supra*.

ISSUES 1(C) AND 2(G): DID SAN MATEO FAIL TO OFFER STUDENT A PLACEMENT THAT WOULD MEET HIS NEEDS FOR A LOW STUDENT-TO-TEACH RATIO, A SMALL CAMPUS, ON-SIT THERAPEUTIC MENTAL HEALTH STAFF, AND A RESIDENTIAL SETTING?

23. The parties no longer disagree about Student's need for a low student-to-teacher ratio, a small campus, and on-site therapeutic mental health staff. Several of Student's IEP documents confirm these needs, and San Mateo's offer of Oak Hill fulfilled all three of them. The parties disagree about Student's need for a residential placement.

24. A child with a disability must be provided a residential program if it is “necessary to provide special education and related services . . .”. (34 C.F.R. § 300.104.) Two decisions of the Ninth Circuit Court of Appeals provide the standards for determining when a residential placement is necessary. In *Seattle Sch. Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493 (*Seattle School District*), a case with obvious parallels to this one, the student had exhibited physical and verbal aggression, oppositional behavior, tantrums, and attention difficulties in class. (*Id.* at p. 1497.) The school district placed her in a special day class and attempted a number of interventions, but her behavior worsened. (*Ibid.*) These problems seriously affected her ability to benefit from classroom instruction; she was frequently removed from class, and became “isolated from other children.” (*Ibid.*) After the school district rejected a residential placement, parents sought an order from an administrative law judge placing their daughter in a residential treatment center in Montana at district expense. (*Id.* at p. 1498.)

25. Relying on the testimony of several professionals that the student required residential placement, the hearing officer in *Seattle School District* ordered the school district to pay for the Montana placement, and the district court and the Ninth Circuit affirmed, agreeing that the district’s “day-schooling proposal was inadequate, that [the student] could not receive an appropriate education outside a residential placement, and that [the Montana facility] was an appropriate placement.” (*Seattle Sch. Dist., supra*, 82 F.3d 1493, at pp. 1498, 1500-1502.)

26. Then in *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458 (*County of San Diego*), the Ninth Circuit articulated a three-part test governing whether a residential placement is necessary. In *County of San Diego* an emotionally disturbed student was hospitalized in a psychiatric unit for violent outbursts at home related to preparing a school science report. (*Id.* at p. 1462.) She returned to school but was assigned little or no homework because it was regarded as too stressful for her. (*Ibid.* at p. 1463.) The school district placed her in an adolescent day treatment facility but she refused to participate in therapy and was frequently truant. (*Ibid.*) She made no progress on her goals. (*Id.* at p. 1464.) She threw tantrums at home over her school therapy assignments, broke windows, threatened to burn the house down, and attacked her mother and sister. (*Id.* at p. 1463.) The student’s parent unilaterally placed her in two private residential treatment centers after the school district insisted on leaving her in day treatment. (*Ibid.*)

27. In *County of San Diego, supra*, 93 F.3d 1458, the Ninth Circuit affirmed the rulings of the hearing officer and the district court that parent was entitled to reimbursement for the unilateral residential placements. It applied the following criteria:

In *Clovis Unified School District v. California Office of Administrative Hearings*, 903 F.2d 635 (9th Cir.1990), this circuit identified three possible tests for determining when to impose responsibility for residential placements on the special education system: (1) where the placement is “supportive” of the pupil's education; (2) where medical, social or emotional problems that

require residential placement are intertwined with educational problems; and (3) when the placement is primarily to aid the student to benefit from special education. *Id.* at 643. The hearing officer applied all three tests to the present case and found that Rosalind's placement at the residential facility satisfied all three.

First, the placement is “supportive” of her education in that it provides the structure, discipline, and support she needs to achieve her IEP and mental health goals. Second, Rosalind's difficulties clearly include substantial educational problems that are related to noneducational problems. Finally, Rosalind's primary problems are educationally related. Therefore, her primary therapeutic need is educational and the primary purpose of her residential placement is educational. Thus, Rosalind satisfies all three tests entitling her to residential treatment provided by the County. (*Id.* at p. 1468.)

28. Application of the *County of San Diego* criteria to this case shows that, by January 2015, Student required a residential placement. Student’s placement at Monarch is supportive of his education, since it keeps him in the classroom far more than his previous placements have done and provides him a diploma track curriculum as well as consistent mental health support around the clock. It “provides the structure, discipline, and support [he] needs to achieve [his] IEP and mental health goals.” (*County of San Diego, supra*, 93 F.3d at p. 1468.) Student’s social and emotional problems that require residential placement are intertwined with educational problems; his anxiety and angry outbursts manifest themselves at school so frequently they keep him outside of class most of the time. His difficulties “clearly include substantial educational problems that are related to noneducational problems.” (*Ibid.*) Student’s placement at Monarch was primarily to aid him in benefitting from his education. Student’s “primary problems are educationally related. Therefore, [his] primary therapeutic need is educational and the primary purpose of [his] residential placement is educational.” (*Ibid.*) The Monarch placement thus satisfies all three of the *County of San Diego* criteria.

29. Student’s educational records and the testimony of Student’s witnesses persuasively showed that by January 2015, Student would no longer meaningfully benefit from placement in a day school. By then, Student’s day schools had repeatedly failed in allowing him to make meaningful progress with his behavioral challenges, peer relations, and classroom attendance under the programs provided him at Burlingame Intermediate School, Esther B. Clark, and D-Tech. He was not making progress on his behavioral goals; his IEP’s showed that he was still attacking peers and adults at least as frequently as he had attacked them in seventh and eighth grade, and perhaps more seriously. Importantly, Esther B. Clark, a non-public therapeutic day school like Oak Hill, made significant efforts to moderate Student’s behaviors by coordinating a behavioral program between home and school, and had failed.

30. Dr. Dunn and Ms. Loveland established that neither Oak Hill nor any other day placement could provide the consistency of behavioral regulation between school and residence that Student needed.¹⁸ San Mateo made no serious effort to establish that Oak Hill could have provided that consistency; its mention of wraparound home services “if needed” was noncommittal and unexplained. Moreover, no attempt at extending behavioral regulation at home would have addressed Ms. Loveland’s legitimate concerns for the physical safety of Student’s family. The testimony of Ms. Mandell, Ms. Brigeman, and Ms. Cianciolo from Monarch showed, now that Student has that consistency, he is able to make substantial progress.

31. In its closing brief, San Mateo does not mention *Seattle School District or County of San Diego*. San Mateo argues that Student did not need a residential placement because of his “demonstrated success in the school setting” at D-Tech, where he was “generally quite successful.” The evidence did not support those claims. Student’s grades were obtained primarily while online in isolation with his aide, or at home with Mother’s help. And “educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.” (*County of San Diego, supra*, 93 F.3d at p. 1467.) The most San Mateo could say about Student’s socialization was that he “interacted,” as Ms. Krummel put it, with other students at lunch, and tried to form a bird club but no one would join it. There was no evidence he had any friends at school.

32. San Mateo’s claim that Student’s behavior “was not out of the ordinary” while at D-Tech has no support in the record. Student’s in-class behavior was so difficult that he was spending only 30 to 40 percent of his time in class, and his in-class time was declining. Student’s behavior was also worsening; he assaulted two teachers in the last two weeks of his presence there. He spent the rest of the semester at home, occasionally visiting teachers who were afraid to meet with him alone. This was not ordinary behavior.

¹⁸ At hearing, letters from Dr. Dunn and Ms. Loveland recommending residential placement for Student were admitted as administrative hearsay under the provision of section 3082, subdivision (b), of title 5 of the California Code of Regulations, which provides that “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.” San Mateo’s objection that they should not have been admitted and should not be used to support any findings is based on the claim that such documents cannot be admitted unless they are basically “redundant” of testimony. No authority or logic supports this claim; evidence that is admissible only if redundant is not useful. The letters do supplement and explain the opinions of Dr. Dunn and Ms. Loveland, but they are not used here as the sole support of any finding; those witnesses elaborated upon their opinions at hearing and were cross-examined on them.

33. San Mateo argues that Student did not need a residential placement because the incident in Ms. Loveland's office was only vaguely related to school. Its focus on that incident alone ignores other substantial evidence of his need for residential treatment. And the evidence does not support that assertion; Student struck his Mother, his sister, and his therapist out of anger and anxiety at an incident that had happened at school. San Mateo's claim in its closing brief that "school is not Student's trigger for violent response" has no basis in the record. Aside from his assaults on teachers, the October 2, 2014 IEP document states that Student "averages 1-5 incidents of aggression toward peers per week."

34. San Mateo also argues that Student did not need a residential placement because his behavior was worse at home than at school. This claim is also unsupported by the evidence, but it is immaterial as well. San Mateo furnishes no reason or authority why this distinction should matter, and no professional testified that it did. The fact that troubles at school manifest themselves at home does not mean that a student's difficulties are not educationally related. In *County of San Diego, supra*, 93 F.3d 1458, the Ninth Circuit mentioned, as educationally related, several behaviors of the student at home, including violent outbursts related to preparing a school science report and tantrums over school therapy assignments. (*Id.* at pp. 1462-1463.)

35. Because by January 16, 2015, Student needed a residential placement to meaningfully benefit from his education, and San Mateo's offers did not provide one, those offers denied him a FAPE.

Remedies

36. ALJ's have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).)

REIMBURSEMENT FOR PRIVATE PLACEMENT

37. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement found to be reimbursable where it had

substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student had made substantial progress].)

38. In *C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155 (*Garden Grove*), the Ninth Circuit set forth the standards to be applied in determining whether a private placement is appropriate for the purpose of reimbursement. There a student had benefited substantially from a private placement, but parents had been awarded only partial reimbursement because the placement did not address all of the student's special education needs. (*Id.* at pp. 1157-1158.) The Court of Appeals held that parents were entitled to full reimbursement because the IDEA "does not require that a private school placement provide all services that a disabled student needs in order to permit full reimbursement." (*Id.* at p. 1158.) In reaching this conclusion the Ninth Circuit relied upon a standard set forth by the Second Circuit:

To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. (*Id.* at p. 1159, quoting *Frank G. v. Bd. of Educ.* (2d Cir.2006) 459 F.3d 356, 365 [citations and emphases omitted].)

The Ninth Circuit explicitly agreed with the Second Circuit: "We agree with and adopt that standard in interpreting what constitutes a 'proper' placement within the meaning of the IDEA." (*Garden Grove, supra*, 635 F.3d at pp. 1159-1160.) The Ninth Circuit has adhered to that standard since. (See, e.g., *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048; *M.N. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 509 Fed.Appx. 640, 641 [nonpub. opn.])

39. Parents have demonstrated that Monarch "provides educational instruction specially designed to meet [Student'] unique needs . . . supported by such services as are necessary to permit [him] to benefit from instruction." (*S.L. v. Upland Unified Sch. Dist., supra*, 747 F.3d at p. 1159; *Garden Grove, supra*, 635 F.3d at p. 1159.) It provides him specially designed instruction and services through his individualized service plan and diploma-track curriculum. His access to that curriculum is supported by speech and language therapy, occupational therapy, and behavioral and mental health services, which are the services San Mateo proposed to deliver, or conduct assessments for, at Oak Hill in order to provide him a FAPE. The evidence showed that he was benefiting from his placement at Monarch, and making progress in his behaviors and relationships to other students and teachers in several ways. In addition, Monarch's certification as a non-public school substantially supports the conclusion that it is an appropriate placement. (See Ed. Code,

§ 56505.2, subd. (b).) The evidence therefore showed that Monarch is a proper and appropriate unilateral placement under *School Committee of Town of Burlington, supra*; *Florence County School Dist. Four, supra*; *S.L. v. Upland Unified Sch. Dist., supra*, and *Garden Grove, supra*.

40. In its closing brief, San Mateo argues that all the evidence from Monarch's witnesses about Student's progress there should be disbelieved because he had to be restrained three times in the residential unit in June 2015, incidents that probably stemmed from homesickness after a visit home. San Mateo's claim that these three incidents were "more severe outbursts than has [sic] ever before been seen in a school setting" is not supported by Monarch's reporting of the incidents or by any testimony at hearing. Those incidents do not undermine the evidence of Student's progress in class and with peers; they merely illustrate that his progress has been uneven and that setbacks can be expected. No professional testified that these incidents had much significance. Dr. Dunn testified persuasively that those incidents did not cause him to change his opinion that Student was making progress at Monarch.

41. San Mateo also argues that Monarch is not an appropriate placement because it is not supplying Student course work that will lead to a high school diploma, but the evidence did not support that argument. The testimony of Ms. Fisher and Ms. Mandell about Student's diploma-track course work was more persuasive than Ms. Dirkmaat's concerns developed from examining a web site. In addition, Monarch's certification by the Department of Education as a non-public school requires that college preparatory courses be available there. (Ed. Code, § 56366.10, subd. (b)(2).)

42. Reimbursement may be reduced or denied if the actions of parents were unreasonable. (20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(3); see *Patricia P. v. Board of Educ. of Oak Park* (7th Cir. 2000) 203 F.3d 462, 469 [reimbursement denied because parent did not allow district a reasonable opportunity to evaluate student following unilateral placement].) San Mateo argues that Parents should be denied reimbursement because "the District's offer of a nearby therapeutic day school was summarily rejected . . . and never tried" and the Monarch placement was "precipitous." The argument fails for several reasons. The Oak Hill offer did not constitute the offer of a FAPE, primarily because it lacked a residential component and secondarily because its offer of mental health services was vague and unclear. There was nothing precipitous about Parents' decision; they considered it for weeks and explored numerous local placement options before deciding on Monarch. Parents had watched the public schools fail to ameliorate Student's behavioral difficulties in elementary school and in high school, and also in Esther B. Clark, a private therapeutic day school similar to Oak Hill. They had no reason to believe Oak Hill would succeed where Esther B. Clark had failed.

43. Parents have no obligation to allow a school district to exhaust all possibilities before they make a unilateral placement. As the Ninth Circuit observed in *Seattle School District, supra*, 82 F.3d at p. 1501: "The IDEA does not require [the student] to spend years in an educational environment likely to be inadequate and to impede her progress simply to

permit the School District to try every option short of residential placement.” In *Forest Grove Sch. Dist. v. T.A.* (9th Cir. 2008) 523 F.3d 1078, 1087, affd. (2009) 557 U.S. 230, the Ninth Circuit held that parents need not seek special education services from a school district at all before they seek reimbursement for a private placement. A contrary rule, the court stated, “would lead to the absurd result that the parents of a child with a disability must wait (an indefinite, perhaps lengthy period) until the child has received special education in public school before sending the child to an appropriate private school . . . no matter how inappropriate the special education.” (*Id.*, 523 F.3d at p. 1087.)

44. Parents have proved that San Mateo’s combined offers of October 2, 2014, and January 16, 2015, were not offers of FAPE. They have also proved that Monarch is an appropriate placement. They will therefore be reimbursed for tuition, transportation, and other reasonable expenses related to Monarch. Parents proved expenditures of \$150,908.70 up to the beginning of the hearing. Independent examination of those expenses shows them to be reasonable. San Mateo did not introduce any evidence, and does not argue, that these expenses were unreasonably incurred. San Mateo did not introduce any evidence that a less expensive residential placement was available or appropriate for Student, or would accept him, and does not propose any alternative to Monarch except day treatment. Parents will therefore be awarded the full amount of their expenses.

COMPENSATORY EDUCATION AND FUTURE PLACEMENT

45. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d at p. 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Ibid.*) An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

46. As equitable relief, an ALJ may also place a student in a non-public school certified by the California Department of Education under Section 56366.1. (Ed. Code, § 56505.2; see also 34 C.F.R. § 300.104; *Seattle Sch. Dist., supra*, 82 F.3d at pp. 1498, 1501-1502.) Monarch is certified under that process. Several equitable considerations support the conclusion that Student’s placement at Monarch should remain in effect at least to the end of his current one-year treatment plan. Student is approximately half way through the one-year program set forth in his individualized service plan, which expires on March 26, 2016. In *Seattle School District, supra*, the Ninth Circuit approved an order for a future residential placement, in part because, by the time the district court ordered it, the student had been in the placement for seven months and “removing her from the program prematurely could have a highly detrimental effect on her progress.” (*Seattle Sch. Dist., supra*, 82 F.3d at p.

1501-1502.) The same is true of Student here; the stability of his educational program is best preserved by continuing his placement at Monarch during his current course of treatment instead of interrupting it. Student is making more progress at Monarch than he made in San Mateo's programs, and there is no available alternative placement that the evidence would support. It is therefore equitable to require San Mateo place Student at Monarch through the IEP process until March 26, 2016, so that his one-year program may be completed. This decision expresses no view about Student's placement beyond March 26, 2016.

47. Moreover, from October 13, 2014, to his arrival at Monarch on February 25, 2015, a period of almost five months, Student essentially lacked an educational placement of any kind, except an informal arrangement to work on academic subjects at home with Mother. During that period he was entitled to a residential placement that included the real-time, around the clock mental health support that Dr. Dunn and Ms. Loveland established he required. Continuation of Student's placement at Monarch for a roughly equivalent period of time is thus appropriate compensation for the absence of a suitable placement between October 2, 2014, and February 25, 2015.

48. For the purpose of reimbursement, Parents proved their expenses through August 2015. Since there will be a gap in financing Student's placement at Monarch from September 2015, to the time when San Mateo places Student there, as ordered by this decision, it is equitable to award compensatory education in the form of reimbursement for tuition, travel, and related expenses between September 1, 2015, and the time San Mateo assumes financial responsibility for the Monarch placement. (See 34 C.F.R. § 300.104 [provision of FAPE must be at no cost to parents].)

Issues Not Decided

ISSUES 1(A) AND 1(B): DID THE IEP'S OF JULY 1, AND SEPTEMBER 4, 2014, PROVIDE STUDENT A FAPE?

49. Parents did not place Student in Monarch until February 2015. Their entitlement to reimbursement for this unilateral placement turns on whether the IEP offer then outstanding, which was the October 2, 2014 IEP offer, as amended on January 16, 2015, provided Student a FAPE. Parents do not seek any relief other than that related to the Monarch placement. It is therefore unnecessary to decide whether the July 1, and September 4, 2014 IEP amendments offered a FAPE, and those issues are not decided here.

ISSUE 2(E): DID THE JANUARY 2015 IEP AMENDMENT FAIL TO OFFER STUDENT A CREDENTIALLED TEACHER?

50. Since the combined October 2014 and January 2015 offers denied Student a FAPE for other reasons described above, and since neither party has adequately briefed or argued this issue, it is unnecessary to decide whether the offer would or would not have provided Student a credentialed teacher.

ISSUES NOT RAISED IN COMPLAINT

51. In his closing brief, Student makes several new arguments that do not relate to issues set forth in his complaint or in the Order Following Prehearing Conference. He argues, for example, that San Mateo violated Education Code section 56342.1, requiring a district to make a full new offer, rather than use an amendment, when placing a student in a private school, and that San Mateo also failed to implement Student's IEP's by failing to deliver several related services. However, issues not raised in Student's complaint cannot be considered unless San Mateo consents, which it has not. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego, supra*, 93 F.3d 1458, 1465.)

ORDER

1. Within 45 days of the date of this Order, San Mateo shall reimburse Parents for their expenses in placing and maintaining Student at Monarch from February 25, to August 31, 2015, in the amount of \$150,908.70.

2. Within 45 days of the date of this Order, San Mateo shall place Student at Monarch through March 26, 2016. San Mateo shall accomplish this by providing Student an IEP that places him at Monarch through that period, with all appropriate services including, but not necessarily limited to, mental health support and counseling (including participation in a social skills group), speech and language therapy, and occupational therapy. The IEP shall also provide any necessary travel expenses for Student and Parents.

3. Within 45 days of receipt of reasonable proof of expenditures, San Mateo shall reimburse Parents monthly for their expenses in placing and maintaining Student at Monarch from September 1, 2015, until San Mateo assumes financial responsibility for the placement.

4. When Parents cease paying Monarch, they shall apply the \$20,000 deposit they have made against Monarch's invoices, and shall remit any remaining amount to San Mateo.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on issues 1.c, 2.c, 2.d, and 2.g. San Mateo prevailed on issues 2.a, 2.b, and 2.f. Issues 1.a, 1.b, and 2.e were not decided.

RIGHT TO APPEAL

This decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: October 23, 2015

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings