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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO CITY UNIFIED  
SCHOOL DISTRICT,  
  
Plaintiff,  
  
v.  
  
R.H., by and through her Guardians ad  
Litem, J.H. and K.H., and J.H., and K.H.,  
individually  
  
Defendants.

No. 2:14-cv-01549-TLN-DB

**OPINION**

This matter is before the Court on Plaintiff Sacramento City Unified School District’s (“Sacramento”) motion for summary judgment. (ECF No. 18) Defendants R.H. (“Student”), by and through her Guardians ad Litem, J.H. (“J.H.” or “Mother”) and K.H. (“K.H.” or “Father”) (collectively, “Parents”), as well as J.H. and K.H. individually, (together, “Defendants”) responded with an opening brief, which the Court interprets as a cross-motion for summary judgment.<sup>1</sup> (ECF No. 19.) The Court has carefully considered all briefings filed in this case. For the reasons set forth below, the Court hereby DENIES Sacramento’s motion for summary judgment and finds that the Administrative Law Judge’s (“ALJ”) decision is substantially

<sup>1</sup> In the action before the administrative law judge, Sacramento City Unified School district was the designated defendant while R.H., J.H., and K.H. were the plaintiffs. In the instant action, this Court has designated Sacramento City Unified School district as plaintiff since the matter is before this Court on their motion for summary judgment. Thus, R.H., J.H., and K.H. will be designated as defendant.

1 supported by the administrative record and thus AFFIRMS the ALJ’s decision. The Court further  
2 DENIES Defendants’ motion for summary judgment as to Defendants’ second and third  
3 counterclaim.

4 **I. PROCEDURAL BACKGROUND**

5 This case arises from a dispute regarding the provision of educational services to Student,  
6 a child with special educational needs. Parents filed a complaint with the California Office of  
7 Administrative Hearings against Sacramento on Student’s behalf, as well as individually, for  
8 alleged violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1401, et seq.  
9 (“IDEA”) in connection with Sacramento’s provision of educational services. (Compl. ECF No.  
10 1 at ¶ 41.) A decision was rendered by an Administrative Law Judge (“ALJ”) on May 23, 2014.  
11 (ECF No. 1 at ¶ 42.) The decision found in favor of Sacramento on some issues, but also  
12 determined that Sacramento did not offer appropriate mental health therapy services or  
13 appropriate academic instruction for Student and ordered Sacramento to reimburse Parents for a  
14 year of Student’s attendance at a residential treatment facility. (ECF No. 1 at ¶ 44.) Sacramento  
15 appeals the ALJ’s decision, alleging that the ALJ’s findings are erroneous, contrary to law, based  
16 upon misinterpretation or misapplication of controlling law, and was unsupported by the evidence  
17 presented at the hearing. (ECF No. 1 at ¶ 45.)

18 **II. FACTUAL BACKGROUND<sup>2</sup>**

19 **A. General Education Background**

20 At the time of the ALJ’s decision, Student was a 17 year old girl in the eleventh grade.  
21 Her father resided within the educational boundaries of Sacramento and her mother resided  
22 elsewhere in the area.<sup>3</sup> From kindergarten through eighth grade, Student attended elementary  
23 schools in Sacramento. Beginning in ninth grade, Student transferred into the San Juan Unified  
24 School District (“San Juan”).

25 \_\_\_\_\_  
26 <sup>2</sup> The following information pertaining to the factual background of this case was taken from the ALJ’s  
27 Decision dated May 23, 2014, and labeled Administrative Record 2013100405 (“AR”) at 1085–1108. The Court has  
28 independently reviewed the evidence referenced herein, but relies on the Administrative Record for the purposes of  
continuity.

<sup>3</sup> Student’s Parents were divorced when she was six years old. They have joint legal custody of her, and have  
alternated having physical custody of her during the relevant time period.

1 At an Individualized Education Program (“IEP”) team meeting on May 1, 2013, when  
2 Student was in tenth grade, San Juan determined that she was eligible for special education and  
3 related services under the educational category of emotional disturbance. Two weeks later, her  
4 parents reenrolled Student in Sacramento and requested special education services. Sacramento  
5 held two IEP team meetings that are the subject of this case: the first on June 5, 2013, and the  
6 second on September 27, 2013. At both IEP team meetings, Parents requested that Student be  
7 placed in a residential treatment facility, but Sacramento denied the requests. In October 2013,  
8 Parents unilaterally placed Student in a residential treatment center called Falcon Ridge Ranch  
9 (“Falcon Ridge”) in Utah, where she still was at the time of hearing.

10 B. Ninth and Tenth Grade Years (2011–2012 and 2012–2013 School Years)

11 In early 2012, Student began outpatient treatment for depression at Kaiser Permanente  
12 Medical Group (“Kaiser”). On May 30, 2012, at the end of ninth grade, Student was hospitalized  
13 at Sierra Vista Hospital, an inpatient psychiatric facility, after an attempted suicide by overdosing  
14 on a combination of prescription and over-the-counter medications at home. Dr. Jason Bynum, a  
15 child and adolescent psychiatrist for Kaiser, first medically diagnosed Student with a mood  
16 disorder, not otherwise specified, and polysubstance abuse in June 2012. Upon her discharge,  
17 Student was sent to the Edgewood Center for Children and Families in San Francisco for two  
18 weeks of intensive residential treatment, family meetings, and therapy, and was discharged from  
19 Edgewood on June 20, 2012.

20 Student’s therapist at Kaiser, Paula Adams, began providing individual therapy to Student  
21 twice a week in the summer of 2012 after her release from Edgewood. The ALJ was persuaded  
22 by the evidence that Ms. Adams struggled to establish a relationship with Student for about a  
23 year. The ALJ determined that Ms. Adams was persuasive, as was Dr. Bynum, that Student  
24 generally presented as “doing fine,” when underneath she had suicidal, dangerous, and impulsive  
25 thoughts and undisclosed behaviors. None of Student’s medical professionals were able to  
26 identify any particular triggers or stressors.

27 On July 19, 2012, Student was admitted to Sierra Vista Hospital after having been placed  
28 on an involuntary psychiatric hold under Welfare and Institutions Code section 5150, for being a

1 danger to herself or others, due to severe depression and suicidal ideation. Student had  
2 experienced a good day with her grandparents the day before, but then underwent a precipitous  
3 drop into suicidal ideation. Student was discharged the next day for outpatient follow-up at  
4 Kaiser.

5 For the fall of 2012, in tenth grade, Parents secured her admission into the Humanities  
6 International Study Program at McClatchy High School in Sacramento, an advanced program for  
7 gifted pupils. They stated that they hoped it would provide Student with motivation to return to  
8 school. McClatchy was a large comprehensive general education campus. The ALJ found that  
9 Student experienced intense pressure to perform perfectly so she could go to college. She was a  
10 general education pupil with no special education supports or services. Student began having  
11 panic attacks at school and became overwhelmed emotionally and depressed. Parents removed  
12 her after about a month and enrolled her in the independent study program at Choices Charter  
13 School (“Choices”) in San Juan. However, her parents concluded that program was not an  
14 appropriate educational environment for Student as she was alone at home for significant periods  
15 of unstructured time, when she should have been under adult supervision and engaged in  
16 structured activities.

17 On December 31, 2012, Student was admitted to Sierra Vista Hospital after she  
18 deliberately ingested a carpet cleaner solution, vomited, and called 911 for help. At that time,  
19 Student was in tenth grade and enrolled at Choices, but it was closed for the winter break. The  
20 hospital discharged Student on January 4, 2013, and she returned to intensive outpatient therapy  
21 at Kaiser.

22 On March 8, 2013, Student was admitted to Sierra Vista Hospital after being placed on a  
23 section 5150 hold. Student stole \$1,000 from her mother, took the mother’s car intending to drive  
24 to New York, and drove as far as Nevada before Parents had law enforcement intervene. She also  
25 purchased marijuana to sell during the trip. On her return, Student demanded the right to be  
26 emancipated and threatened to kill herself. On March 19, 2013, Student was discharged from  
27 Sierra Vista Hospital for further assessment and residential therapeutic treatment at Edgewood,  
28 including individual and family therapy. Student was discharged from Edgewood on April 5,

1 2013.

2 On April 25, 2013, Student was again hospitalized at Sierra Vista Hospital after she  
3 attempted to run away to Europe. She forged a letter from Parents, and obtained Mother's bank  
4 account information and a passport. Student was discharged from the hospital on May 10, 2013.  
5 During these hospitalizations, Parents learned that Student had been engaging in other risky and  
6 dangerous behaviors at home or in the community, including cutting herself, purging food, and  
7 doing illegal drugs.

8 *i. April 2013 San Juan Assessment and May 2013 IEP Team Meeting*

9 On April 8, 2013, a San Juan school psychologist assessed Student and the results were  
10 reviewed at the May 2013 IEP team meeting.<sup>4</sup> On standardized assessment tests for cognitive  
11 functioning, Student scored in the above average range. On standardized academic tests, Student  
12 scored in the average or high average range in all areas. However, Student was in the clinically  
13 significant range (showing severe mental health concerns) for depression, anxiety, conduct  
14 problems, low self-esteem, and significant social stress. Primarily due to her hospitalizations that  
15 spring, Student's grades suffered. Although she had an A in Honors English 2, she had a D+ in  
16 French 2, an F in Earth Science, a C+ in English 3.

17 At the May 1, 2013, IEP team meeting, held while Student was still hospitalized, San Juan  
18 found Student eligible for special education under the emotional disturbance category because she  
19 had a general pervasive mood of unhappiness or depression and inappropriate types of behavior  
20 or feelings under normal circumstances that adversely affected her educational performance over  
21 a long period of time and to a marked degree. The IEP team determined that Student's disability  
22 affected her involvement and progress in the general curriculum due to multiple hospitalizations  
23 and absences from school.

24 Parents requested a residential treatment placement. However, the school district  
25 members of the San Juan IEP team tentatively offered Student an educational placement,  
26 including the 2013 extended school year, at La Vista Center, a small therapeutic school for pupils  
27 with emotional disturbance. Parents agreed to visit the school site, and the team agreed to

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28 <sup>4</sup> The legal sufficiency of these assessments is not at issue in this proceeding.

1 continue the IEP team meeting to complete the IEP. Parents then canceled the visit.

2 At that time, Student had unique needs related to her educational disability in the areas of  
3 safety (due to suicidal ideation); self-advocacy when overwhelmed, anxious, or fearful; mental  
4 health, including depression and anxiety; attendance (when hospitalized); and postsecondary  
5 transition to adult life, college, and career.

6 C. 2013 Extended School Year and June 2013 IEP

7 On May 13, 2013, Parents declined San Juan's proposed placement and chose not to  
8 complete that IEP process. Because Parents did not complete or consent to the San Juan IEP,  
9 Student reentered Sacramento as a general education pupil without an IEP. Sacramento had  
10 attended the San Juan IEP team meeting and offered to immediately place Student at the Sierra  
11 School at Eastern: Upper School (Sierra School), pending an IEP team meeting in June 2013, and  
12 Parents agreed.

13 Sierra School is a nonpublic school in contract with Sacramento that provides specialized  
14 instruction in a small campus environment, with a school-wide behavior management system and  
15 therapists on staff. Sierra School is a small school comprised of about 85 special education  
16 pupils, of whom about 25 pupils were eligible for services under the emotional disturbance  
17 category. The high school program had about 12 pupils with special needs.

18 On June 5, 2013, Sacramento held an IEP team meeting. At the time of this meeting,  
19 Student's unique needs had not changed since the May 2013 IEP team meeting with San Juan.  
20 She had been attending Sierra School in tenth grade since mid-May 2013 without incident.  
21 Sacramento offered Student continued placement at Sierra School, including the extended  
22 summer school, along with annual goals, weekly individual and group counseling sessions, a one-  
23 to-one aide, and behavioral intervention and transition services, which are discussed in more  
24 detail below. Because Sacramento was concerned about the quality of the San Juan assessment,  
25 Sacramento offered to reassess Student after the summer break. Parents consented to the IEP but  
26 stated that Student's mental health professionals had recommended a residential placement, and  
27 requested a program review six weeks into the fall quarter at school. The regular school year  
28 ended two days later.

1                                    *i.        Extended School Year Academic Instruction*

2                    Student does not contend that Sacramento’s initial 30 day placement of her at Sierra  
3 School denied her a Free Appropriate Public Education (“FAPE”). She contends that  
4 Sacramento’s June 2013 IEP denied her a FAPE beginning with the summer 2013 extended  
5 school year because it did not offer or provide her appropriate academic instruction. For the  
6 special education extended school year, from June 17, to July 18, 2013, the IEP offered her 330  
7 minutes of specialized academic instruction per day for 20 school days. In addition, it offered her  
8 the same rate of daily specialized education for the 2013 – 2014 school year in eleventh grade.

9                    For the June 2013 IEP team meeting, Student’s teacher at Sierra School, Sara Williams,  
10 conducted a standardized academic assessment of Student. On the standardized tests, Student’s  
11 grade equivalency was 12.9 (twelfth grade, nine months) for reading comprehension, numerical  
12 operations, and math reasoning, and 10.8 (tenth grade, eight months) for spelling. Her reading  
13 comprehension score was in the superior range. By that point, Student had received transfer  
14 credits from San Juan, and was getting an A in all of her subjects (English 10, English 11,  
15 Algebra II, Fine Arts, and US History) at Sierra School. Student was very bright and verbally  
16 expressive, and presented to the school staff as “exceptionally talented.”

17                    For the extended summer school year at Sierra School, Student was successful  
18 academically and received all A’s in her subjects. The ALJ found that the academic curriculum  
19 conformed to California standards. However, the curriculum during the extended school year was  
20 designed to prevent special education pupils from regression as required by law and was not  
21 rigorous. For many of the pupils, the curriculum was modified as they had more academic  
22 challenges. The grades in Student’s class were issued based on the quality and quantity of each  
23 pupil’s school work, along with their attendance.

24                    Student’s teacher worked with her individually for 30 to 60 minutes each day on a one-to-  
25 one basis, and the ALJ determined there was no evidence her curriculum was substandard.  
26 Student was able to perform successfully in the academic curriculum in a cooperative, respectful  
27 and committed manner, and received educational benefit. Student did not engage in any  
28 inappropriate emotional outbursts or behaviors or otherwise display signs of emotional

1 dysregulation with either peers or adults at school.

2 Dr. Paula Solomon was retained by Parents in late January 2013, reviewed Student's  
3 records, observed her at Falcon Ridge, and observed one of Sierra School's classes in February  
4 2013. Dr. Solomon spent only a short time in the class at Sierra School, at a time when there  
5 were few pupils and no structured activities. She did not interview Student's teacher or therapist.  
6 Dr. Solomon discounted Student's ability to function well and perform academically at school  
7 with mental health supports outside of a residential placement, and claimed that Student could not  
8 focus sufficiently on academic materials in order to receive an education. The ALJ found this  
9 opinion was persuasively contradicted by the testimony of Sacramento's witnesses from Sierra  
10 School who worked with her daily and saw her engaged in the curriculum.

11 The ALJ determined that Student's claim that the academic instruction at Sierra School  
12 was a "joke" reflected her depressed mental outlook as well as her probable misunderstanding  
13 about the nature of the special education summer school program. Indeed, Parents informed the  
14 IEP team, and established at the hearing, that Student was prone to exaggeration and her  
15 statements could not always be trusted. In addition, the ALJ concluded that Student tended to  
16 drive herself very hard and competitively in academics, which was often counterproductive as it  
17 led to increased stress, anxiety, and fears of inadequacy. Consequently, if Sierra School's summer  
18 academic curriculum was not as demanding as she would have preferred, it provided her a  
19 sufficient learning environment in which to obtain educational benefit while receiving therapeutic  
20 counseling and working on stabilizing her social emotional regulation, which were her primary  
21 areas of need.

22 The extended school year curriculum supported keeping Student safe and avoiding  
23 regression or deterioration in her mental health, and academics was not an area of need outside of  
24 attendance. The fact that there were pupils in Student's class who functioned at lower cognitive  
25 levels demonstrated the diversity of the disabled population at the school and did not establish a  
26 fatal defect in the academic program tailored for Student. As found below, for eleventh grade,  
27 Sacramento offered Student a more rigorous academic program in the September 2013 IEP.  
28 However, that offer did not establish that the academic curriculum at Sierra School for the four-



1 week extended school year in the summer was inappropriate.

2 *ii. Mental Health Therapy Services*

3 Student contends that the June 2013 IEP denied her a FAPE because it did not offer her  
4 appropriate mental health therapy services for the extended school year or the beginning of  
5 eleventh grade until her next IEP team meeting on September 27, 2013. To support Student's  
6 mental health needs, the IEP offered her annual mental health goals, individual and group  
7 counseling, behavior intervention services, and a behavioral aide, discussed in detail below. By  
8 the time these services were offered, Sacramento and Sierra School staff had observed and  
9 worked with Student for about 30 days.

10 Specifically, the IEP offered her an annual goal in the area of self-advocacy, and three  
11 annual goals in the social emotional areas of self-esteem, safety, and self-talk. Student's areas of  
12 need addressed by these goals and her levels of functioning with respect to them were developed  
13 based on the assessment and other information provided to Sacramento by Parents and San Juan.  
14 The self-advocacy goal provided that when Student became overwhelmed, anxious or fearful, she  
15 would initiate a conversation with a trusted staff member and respond positively to de-escalation  
16 strategies. The self-esteem goal worked on Student's ability to recognize and acknowledge  
17 positive comments from others. The safety goal was for Student to utilize on-campus supports,  
18 and develop outside social supports and positive relationships as protective factors against her  
19 persistent suicidal ideation. The self-talk goal encouraged Student to engage in positive self-talk  
20 and discuss strategies for increasing her self-image and engaging in future-oriented thinking. The  
21 IEP provided that Student's therapist at Sierra School was the primary staff responsible to work  
22 with Student on her goals.

23 For the extended school year, the June 2013 IEP offered four 30-minute sessions of  
24 individual counseling, and one group session of counseling and guidance. The IEP offered  
25 behavioral intervention services of 120 minutes of consultation during the extended summer  
26 school from Learning Solutions, Behavioral and Educational Consultants, a nonpublic agency.  
27 The IEP provided that Learning Solutions would also provide an instructional or behavioral aide  
28 to accompany Student each day to address her safety needs. The aide was instructed to be within

1 “earshot and eyesight” of all of Student’s interactions on a daily basis, including using the  
2 restroom, and report any occurrence of possible precursor verbal or physical behaviors, including  
3 inappropriate comments, that would warn of emotional dysregulation. The aide had a safety  
4 crisis plan and mobile phone to swiftly intervene in an emergency. The behavior support services  
5 included data collection and a crisis plan, and allowed Student to take breaks throughout the  
6 school day as needed.

7 As of the June 2013 IEP team meeting when the above offers were made, Sierra School  
8 staff, including her therapist, perceived that Student typically appeared to be in a positive mood at  
9 school and rarely appeared to be emotionally deregulated, and were impressed with her  
10 intelligence and leadership qualities. Student was very social with her peers, often acted as a  
11 mediator in group situations, and there were no reports of self-harm, inappropriate statements or  
12 suicidal ideation. There were occasions when Student stated that she did not want to complete an  
13 assignment, engaged in off-task behavior, and attempted to sleep in class. Student’s challenges at  
14 school were primarily emotional in nature, whereas most of the school’s other pupils had both  
15 behavioral and emotional challenges. However, Student presented uncontested evidence that she  
16 was skilled at masking her true feelings.

17 Pursuant to the IEP, Student received school based counseling and therapy at Sierra  
18 School from one of the school’s therapists, Tara Peterson. Ms. Peterson has provided counseling  
19 to about 150 pupils with mental health needs, including 30 to 50 with suicidal ideation, and 15 to  
20 20 who have been actively suicidal or placed on involuntary psychiatric holds. She has conducted  
21 risk assessments and had called law-enforcement for that purpose. During summer school,  
22 Student’s group therapy was a girls’ process group, focused on increasing understanding, insight,  
23 and self-awareness about one’s own behavior and its impact on others.

24 From May 13, through the end of the regular school year on June 7, 2013, and from the  
25 start of the extended school year on June 17, through July 18, 2013, the behavioral aide from  
26 Learning Solutions did not observe Student engage in any emotional or behavioral incidents of  
27 concern at school. Nor were there any reportable concerns during the beginning of 11th grade  
28 prior to September 9, 2013.

1 Ms. Peterson was persuasive that Student's overall participation and cooperation in the  
2 therapy process was genuine. For example, Ms. Peterson credibly established that many of  
3 Student's private journal entries regarding the depth of her despair and depression did not surprise  
4 Ms. Peterson because Student had shared those feelings with her during their therapy sessions.  
5 Ms. Peterson wrote Student's goals for self-advocacy, self-esteem, safety, and self-talk, and  
6 worked with Student on the goals on a regular basis. Student struggled with low self-esteem and  
7 negative self-talk, but Ms. Peterson noted some progress on the goals through the extended school  
8 year and the beginning of eleventh grade. The ALJ found that Ms. Peterson was persuasive that  
9 Student was able to recognize when she engaged in negative self-talk and was able to work with  
10 Ms. Peterson to develop strategies to focus more positively.

11 However, the ALJ determined that, while Student established a rapport with Ms. Peterson,  
12 liked her, and disclosed sensitive matters to her individually and in the group counseling sessions,  
13 Student did not establish a meaningful level of therapeutic intimacy with her by the beginning of  
14 eleventh grade. As an example, the ALJ noted that Student did not disclose to Ms. Peterson her  
15 illegal drug use or other risky behaviors in her personal life, such as engaging in sexual conduct  
16 outside of school. However, this fact did not become apparent to Ms. Peterson or Sacramento  
17 until the September 2013 assessment, as found below.

18 At the time Sacramento offered the above mental health therapy services and supports to  
19 Student in the June 2013 IEP, Sacramento had observed and worked with Student for a month.  
20 The ALJ found that Sacramento did not have reason to believe that she required more frequent or  
21 different educationally related therapy in order to access and benefit from her education. Nor did  
22 the ALJ find evidence that Student's conduct during the extended school year provided any  
23 objective indication that the services were not appropriate. The ALJ concluded that the mental  
24 health services and supports that Sacramento offered to Student were reasonably calculated to  
25 provide educational benefit, meet her mental health needs, and keep her safe in the school setting  
26 during that time.

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1                                    *iii. Individual Transition Plan*

2                    Student contends that Sacramento denied her a FAPE because the June 2013 IEP failed to  
3 offer her an appropriate individual transition plan. After Student was made eligible for special  
4 education and began attending Sierra School, the staff determined that she would like to go to  
5 college and major in public relations as a career interest. Eric Hernandez, a behavior intervention  
6 specialist with Sacramento, drafted the individual transition plan that was presented to Student's  
7 June 2013 IEP team with her stated postsecondary objectives in mind.

8                    The transition plan offered to Student at the June 2013 IEP team meeting noted that she  
9 needed to complete a career assessment. Based on Student's desire to attend college and major in  
10 public relations, the plan provided for a postsecondary educational goal to attend college, a  
11 postsecondary employment goal to work part-time while attending college, and a postsecondary  
12 independent living goal to live independently upon completion of school. At the time this  
13 transition plan was offered, Student had completed 130 credits toward graduation with 95  
14 pending and was on track to graduate. She had already passed the California High School Exit  
15 Examination in English language arts and math. The IEP offered Student 30 minutes monthly of  
16 career awareness services, and career awareness activities were also embedded in the curriculum.  
17 Student participated in an independent living skills class at Sierra School twice a week, with a  
18 focus on social skills, daily living skills, and career exploration.

19                    The plan included transition services to support each of these goals. For example, for the  
20 goal to attend college, the plan provided for Student to complete career research in her chosen  
21 career of interest, complete her last two years of high school, and take tours of colleges. For  
22 independent living, Student was to work on a budget and explore different living options. For  
23 employment, Student would complete a career assessment, do career research, and learn skills  
24 related to completing applications, along with industry tours. The IEP also included an annual  
25 goal in the area of career exploration, noting that Student had not engaged in career exploration  
26 activities to date in order to research jobs of interest.

27                    The ALJ observed that Student was critical of the individual transition plan because it did  
28 not include any goals or services to help her advocate for mental health services after high school,

1 or to understand her underlying mental health issues. However, the individual transition plan was  
2 part of Student's June 2013 IEP, which included self-advocacy and multiple social emotional  
3 goals to support her mental health needs. The ALJ found that Mr. Hernandez was persuasive that  
4 Student's transition plan for the 2013 extended school year and the beginning of eleventh grade  
5 provided her the foundational skills in postsecondary planning that would be further developed as  
6 she entered her twelfth grade year. In addition, Sacramento's Workability program visited the  
7 campus to provide services related to postsecondary goals including job searches and college  
8 tours. Therefore, the ALJ determined that Defendants did not establish that Sacramento's  
9 transition plans violated the law.

10 D. 2013–2014 School Year to the September 27, 2013 IEP Offer

11 As discussed above, for the start of the 2013-2014 school year in eleventh grade, the June  
12 2013 IEP offered continued placement at Sierra School with specialized academic instruction,  
13 mental health therapy services, a one-to-one aide, and behavioral intervention and transition  
14 services. Student contends that the placement, instruction, mental health therapy services and  
15 supports, and the transition plan continued to deny her a FAPE.

16 i. *Academic Instruction*

17 After Student's eleventh grade year began on August 19, 2013, Student continued to  
18 receive specialized academic instruction pursuant to the June 2013 IEP. The ALJ found that  
19 Student's classes conformed to the state curriculum for eleventh grade.

20 However, while the academic curriculum for the extended school year program was  
21 adequate to prevent Student's regression during that time period, the ALJ determined that for  
22 eleventh grade Student was entitled to a higher level of academic rigor commensurate with her  
23 abilities. The ALJ concluded that Sacramento was therefore required, based on its knowledge of  
24 her academic success, to convene an IEP team meeting and consider other academic options for  
25 eleventh grade. Sacramento had agreed to revisit Student's IEP within six weeks of the start of  
26 the fall school year at Parents' request. Student was hospitalized at Sierra Vista Hospital on  
27 September 10, 2013. Thereafter, Sacramento assessed Student and reconvened an IEP team  
28 meeting on September 27, 2013. At that time, Sacramento offered Student a higher level of

1 academic instruction at another school, discussed in more detail below. Sacramento had already  
2 planned to reassess Student after the start of the new school year. Sacramento timely assessed  
3 her, and convened the September 2013 IEP team meeting.

4 *ii. Mental Health Therapy Services*

5 For the beginning of the eleventh grade school year at Sierra School, the June 2013 IEP  
6 offered Student 30 minutes of individual counseling 30 times, for a total of 900 minutes (about  
7 once a week). In addition, the IEP offered group counseling and guidance sessions for 160  
8 minutes per month during the school year (40 minutes a week).

9 At the beginning of eleventh grade, Ms. Peterson led a girls' "think confident" group in  
10 which Student participated weekly, focusing on cognitive behavioral therapy to change one's  
11 thinking patterns and create a more positive self-image. The group learned tools and  
12 interventions including peer feedback and social skill exercises. Ms. Peterson also continued to  
13 provide individual therapy to Student once a week. Student had perfect attendance in therapy,  
14 was engaged in the conversations, and offered appropriate feedback to others. In addition, Ms.  
15 Peterson saw Student daily on campus and was available as needed. The behavioral intervention  
16 services were for 120 minutes of monthly consultation, along with the continued daily presence of  
17 the behavioral aide.

18 On September 9, 2013, Student had ingested cocaine at home during the night or before  
19 school started. The aide reported that Student arrived at school exhibiting very "hyper" behaviors  
20 (fidgeting, pacing, and talking fast), reported she hadn't slept, was exhausted and sick, and asked  
21 to call Father, who told her to stay at school. Student later informed the aide she felt like crying  
22 and requested to speak with the counselor, Ms. Peterson. Student did not disclose to Ms. Peterson  
23 that she was coming down from using cocaine but shared that she was concerned and ill. Ms.  
24 Peterson conducted a risk assessment, concluded that Student was not at risk for suicide but  
25 provided her with a suicide hotline number just in case, and contacted Father, who directed  
26 Student to go to her grandparents' home. Mother picked Student up and brought her to a Kaiser  
27 Hospital emergency room for drug testing. Mother found Student's journal, read through some of  
28 it, and discovered Student had snuck out of the home and engaged in sex with someone known to

1 Mother. She also found a recent journal entry in which Student expressed feelings of  
2 hopelessness and suicidal ideation, and informed the hospital. The hospital admitted Student to  
3 Sierra Vista Hospital Student on a section 5150 involuntary psychiatric hold. Aside from the  
4 journal entry, there was no other evidence of suicidal ideation at the time of hospitalization.

5 Student remained in the hospital for a month. On September 18, 2013, Parents provided  
6 Sacramento with written notice that they intended to unilaterally place Student in a residential  
7 treatment center and seek reimbursement. October 4, 2013, Parents transferred Student from the  
8 hospital to Falcon Ridge in Utah.

9 The ALJ concluded that, based on San Juan's assessment information, and Student's  
10 performance at school from May through September 8, 2013, the mental health therapy services  
11 offered in the June 2013 IEP supported Student's ability to be academically and socially  
12 productive in the school setting over the summer because she received school-based therapy for  
13 the first time under an IEP. Sacramento had already offered to reassess Student after the summer  
14 break and followed through with that plan. Thus, the ALJ concluded that Student's sudden  
15 hospitalization did not establish that Sacramento should have revisited the services at an IEP  
16 meeting any earlier than September 27, 2013. However, the ALJ concluded that this  
17 hospitalization required Sacramento to review Student's levels of performance and IEP services.

18 E. September 2013 Assessment and September 27, 2013 IEP Offer

19 i. *September 2013 Psychoeducational Assessment*

20 While Student was hospitalized, Sacramento obtained Parents' consent to conduct another  
21 assessment because Sacramento felt San Juan's assessment did not provide them with sufficient  
22 information in light of Student's hospitalization. Beginning on September 13, 2013, Sacramento  
23 school psychologist Sara Pieschl, school social worker Maria Lopez, and behavior intervention  
24 specialist Eric Hernandez conducted a multidisciplinary psychoeducational assessment. This  
25 team was part of Sacramento's educationally related mental health services division in the special  
26 education department. They interviewed many people, including Dr. Bynum,<sup>5</sup> Ms. Adams, and

27 <sup>5</sup> At this interview, Dr. Bynum informed Sacramento that he changed his diagnosis of Student on September  
28 2013. Because of changes in diagnosis guidelines, Dr. Bynum diagnosed Student with a borderline personality  
disorder, involving chronic emotional lability, impulsivity, mood swings, and suicidality.

1 other Kaiser and Sierra Vista hospital personnel, Parents, Ms. Peterson, and Student, reviewed her  
2 school records, and administered a battery of standardized assessment tests and social, emotional,  
3 and behavioral rating scales.

4 Sacramento's assessment team visited Student at the hospital to assess her, during which  
5 Student stated that, in her opinion, the hospital was "a holding cell," not a therapeutic  
6 environment. Dr. Bynum viewed Student's recent conduct as a precursor to further self-harm and  
7 Sacramento was informed that Student tried to choke herself in the hospital. Dr. Bynum candidly  
8 admitted that he cooperated with Parents in September 2013, to retain Student at Sierra Vista  
9 Hospital to keep her safe until Parents located a residential treatment placement and that process  
10 took a month.

11 Sacramento's multidisciplinary team recommended that Student remained eligible for  
12 special education under the category of emotional disturbance with the same areas of concern  
13 found by the San Juan assessment. The assessors noted that there was mixed information  
14 regarding the adverse impact of Student's disability on her educational performance. While they  
15 acknowledged that her "engagement in the school environment has been limited due to frequent  
16 hospitalizations due to mental health needs," they noted Student had passed every class in high  
17 school, passed the California High School Exit Exam, was at or above grade level according to  
18 academic achievement testing, and met or exceeded all classroom expectations. However, the  
19 assessment data found that Student had elevated levels of depression, ineffectiveness, and sense  
20 of inadequacy, and would therefore benefit from educationally related mental health services in  
21 the school. The assessors did not make any recommendation regarding residential placement, but  
22 left that discussion to the IEP team.

23 Based on the behavior data collected, Ms. Pieschl determined that Student did not require  
24 a behavior support plan in her IEP because her problems were emotional and not behavioral in  
25 nature within the school setting. Student's scores on the assessment tests were consistent with  
26 those obtained by the San Juan assessment, except that for written expression Student scored in  
27 the very superior range. Parents and Student rated her behaviors primarily in the at-risk or  
28 clinically significant range based on Student's behaviors at home or in the community. However,



1 Sierra School staff primarily rated her behaviors within the average range because Student did not  
2 manifest any significant concerns at school.

3 *ii. September 2013 IEP Offer*

4 On September 27, 2013, Sacramento held an IEP team meeting to review the  
5 multidisciplinary assessment results, which lasted over three and a half hours. In addition to  
6 Parents, Student participated in the IEP team meeting by telephone from the hospital for a few  
7 minutes and expressed a desire to have more rigorous academic classes, as she did not feel  
8 challenged by the academics at Sierra School. Dr. Bynum also participated by telephone, and  
9 recommended a residential treatment center placement for Student. The ALJ determined that, at  
10 the time of this IEP team meeting, Student had unique needs in the areas of interpersonal  
11 communication, self-advocacy, mental health, self-worth and self-esteem, planning and task  
12 completion, safety, attendance, and postsecondary college and career exploration.

13 After considering all factors, including Parents' concerns, Sacramento did not offer  
14 Student a residential treatment placement. Instead, the September 2013 IEP offered Student new  
15 annual goals; a dual educational placement at both Sierra School and George Washington Carver  
16 School (Carver); continuation of a one-to-one aide for her safety purposes, continuation of her  
17 mental health therapy and supports, the addition of mental health services at Carver, and a new  
18 individual transition plan. These offers are discussed in more detail below.

19 a. Eleventh Grade Academic Instruction

20 Student contends that the September 2013 IEP's offer of mental health services was  
21 inappropriate to provide her with educational benefit because she needed more intensive services  
22 and supports. After school started in August 2013, Student had begun displaying some minor  
23 erratic behaviors at school by utilizing periodic breaks that were provided for her as an  
24 accommodation in her IEP, due to her self-reported frustrations with some peers. In addition, her  
25 teacher had seen an increase in some manipulative and staff splitting behaviors in her attempts to  
26 converse with peers from other classrooms. At the September 2013 IEP team meeting, however,  
27 the ALJ determined that Sacramento had significant new information and changed circumstances  
28 to consider, including Student's use of an illegal drug in the home environment, appearance at

1 school under the influence of the drug on September 9, 2013, subsequent hospitalization, and  
2 Sacramento's assessment results, including detailed information from Student's private medical  
3 providers.

4 The IEP offered Student multiple annual goals derived from the assessment data in the  
5 areas of interpersonal communication, self-worth, planning, task completion, strategies to  
6 overcome low self-esteem, and identifying and reframing feelings of hopelessness. For the  
7 interpersonal communication goal, Student would recognize and acknowledge positive comments  
8 from staff and peers, and respond with positive statements. The self-worth goal provided that  
9 Student would be able to use strategies to identify the point in an event or project where her  
10 negative thinking would interfere with its completion. The IEP offered a goal for Student to be  
11 able to identify situations and relationships that have contributed to her low self-esteem and be  
12 able to develop and implement constructive strategies to overcome them within the safety of her  
13 therapy sessions. To address Student's sense of hopelessness, the IEP offered a goal for her to  
14 identify feelings of hopelessness and learn to reframe them into statements of self-empowerment.  
15 Student's therapists were responsible for implementing most of these goals, and Student's  
16 teachers were responsible for implementing the planning and task completion goals. While there  
17 was no evidence that Student suffered from emotional dysregulation or suicidal ideation in the  
18 school environment, her mental state of health was educationally related and these IEP goals were  
19 designed to improve her ability to function on a daily basis, avoid hospitalization, and receive  
20 educational benefit.

21 The September 2013 IEP offer continued Student's counseling at Sierra School with Ms.  
22 Peterson at the same rate as that in the June 2013 IEP: one session of individual counseling for 30  
23 minutes, and one session of group counseling 40 minutes per week. In addition, the IEP added  
24 two 30-minute sessions of individual, educationally related mental health counseling at Carver  
25 each week to support her mental health needs on that campus with the intent to provide continuity  
26 of support on her IEP goals. The IEP also offered 30 minutes weekly of ongoing consultation  
27 between Student's family, Sacramento's educationally related mental health team, the Sierra  
28 School therapist, and Student's private medical mental health team. Hence, the IEP offered

1 Student three individual counseling sessions per week, one at Sierra School and two at Carver  
2 with two different therapists; one group therapy session per week at Sierra; and 30 minutes of  
3 weekly consultation among all of Student's educational and medical providers and family.

4 Both Ms. Peterson, Student's therapist at Sierra School, and Mary Bourgeois, a  
5 Sacramento school psychologist in the educationally related mental health services division,  
6 believed that Sacramento's offer to have Student receive mental health therapy from two different  
7 therapists at two different schools was workable and would not hinder Student's receipt of  
8 adequate mental health therapy. If Student attended Carver, Ms. Bourgeois would provide her  
9 mental health therapy services there. Both therapists were confident that regular communication  
10 and consultation between them would work, and would avoid Student's manipulation of them, or  
11 engaging in "splitting" behaviors by giving inconsistent information to each of them.

12 However, the ALJ determined that they did not establish that such an arrangement would  
13 be therapeutically advisable or effective for Student, whose ability to share confidential  
14 information with a trusted therapist would be compromised. First, the ALJ observed that Student  
15 had already demonstrated avoidance of sharing her thoughts with the behavioral aide, because  
16 Student understood that whatever she said or did would be reported. Second, the ALJ found that  
17 Sacramento should have understood by then that Student did not establish a meaningful level of  
18 therapeutic intimacy with Ms. Peterson by the beginning of 11th grade, and had not established  
19 sufficient trust with Ms. Peterson to engage in intensive disclosure of her deepest needs and  
20 anxieties. Consequently, the ALJ concluded that adding another therapist was problematic.

21 The ALJ found that the evidence established that Sacramento offered Student mental  
22 health therapy services at Carver because she required therapy there to be placed on that campus,  
23 not because the school district believed she required more intensive mental health therapy support  
24 in general. The ALJ further determined that Sacramento staff viewed Student's hospitalization as  
25 involving her conduct outside of school including drug use. The ALJ concluded that view  
26 overlooked the school district's responsibility to offer and provide meaningful and effective  
27 therapy in the complex areas of mental health and self-worth.

28 The ALJ observed that Ms. Adams was critical of Sacramento's offer to have an

1 educationally related mental health therapist work with Student at Carver, in addition to her  
2 therapy work with Ms. Peterson at Sierra School, and her criticism was persuasive. The ALJ  
3 found Ms. Adams persuasive that Student was able to mask what she was really feeling and  
4 highly resistant to allow for a more intimate therapeutic relationship necessary for effective  
5 therapy. Ms. Adams was not aware of Sacramento's plan to have weekly consultations between  
6 the therapists and the family, including her. Nevertheless, the ALJ determined that, given the  
7 fragility of Student's mental health, anxiety, depression, and sense of hopelessness, Ms. Adams  
8 was persuasive that it would be extremely difficult and challenging for Student to establish an  
9 effective therapeutic relationship with two separate therapists at two schools, plus continue with  
10 her or another private therapist at Kaiser, and that Student was capable of manipulating all of  
11 them. Given Ms. Adams' extensive outpatient therapy with Student since 2012, her opinion on  
12 this point was entitled to great weight.

13 In addition, the ALJ concluded Ms. Adams established that Student was at a high risk  
14 precisely when she was doing well, because her downward spirals into self-harm were sudden and  
15 unpredictable. On September 25, 2013, both Ms. Pieschl and Ms. Lopez interviewed Ms. Adams  
16 during the assessment process. Ms. Adams informed them in no uncertain terms that, over the  
17 period in which she had been providing therapy, Student would attend and participate in therapy  
18 regularly, appear to be compliant, and then engage in sudden self-harming behavior shortly  
19 thereafter. Ms. Adams's concern that Sacramento did not understand the severity of Student's  
20 mental health needs and suicidality was valid given the scope of the September 2013 offer for  
21 limited and fractured mental health supports.

22 The ALJ found that Ms. Adams was persuasive that Student required one experienced  
23 therapist to provide her with effective counseling. The ALJ concluded that Ms. Adams' opinion  
24 on this point was more persuasive than that of Ms. Peterson, who did not have much experience  
25 and seemed to take Student's statements and demeanor at face-value, without realizing the extent  
26 to which Student successfully masked her inner turmoil and had sudden declines. Moreover, the  
27 ALJ considered that Ms. Peterson had failed to follow through in arranging communication with  
28 Ms. Adams during the extended school year, suggesting that the proposed design for weekly

1 consultation among all players would be problematic. In addition, based on the detailed  
2 information from Dr. Bynum and Ms. Adams, the ALJ found that Sacramento should have  
3 realized that Student's apparent progress socially and emotionally was fragile, if not illusive, and  
4 required more intensive supports.

5 Dr. Solomon was critical of Sacramento's September 2013 offer of mental health services  
6 because, in her opinion, Student needed group counseling on a daily basis, along with individual  
7 and family counseling from an experienced therapist in a residential treatment setting. Dr.  
8 Solomon believed that Student fit the profile for a bipolar disorder, a disorder with lengthy  
9 periods of grandiosity and depressive states. Dr. Solomon recommended that Student should be  
10 in the "container" of a residential treatment center placement and did not think that Student had  
11 the coping skills to function outside of that structured placement when things go wrong. The ALJ  
12 noted that, while Dr. Solomon was mistaken in thinking that Sacramento did not offer Student  
13 group therapy, which she needed for accountability, the ALJ found Dr. Solomon persuasive that,  
14 overall, Student required daily mental health supports to progress. The ALJ felt Dr. Solomon's  
15 opinion as to the level of placement required was based on a clinical evaluation of what Student  
16 needed medically to treat her illness. Nevertheless, the ALJ found her persuasive that Student  
17 required more intensive therapy from an experienced therapist, rather than two different therapists  
18 at two different school locations with no structure for daily therapeutic supports.

19 Based on the foregoing, the ALJ concluded that Sacramento's September 2013 IEP offer  
20 of mental health therapy services to Student was insufficient to support her receipt of meaningful  
21 educational benefit because the IEP offered a fractured structure of therapy divided between two  
22 schools and two therapists, which created unacceptable risks that Student's mental health needs  
23 would not be adequately met. While the number of weekly counseling sessions may have been  
24 adequate, the ALJ determined that the offer also failed because there was no structure of daily  
25 therapeutic supports to help Student work meaningfully on her mental health and social emotional  
26 goals on a daily basis. The ALJ concluded that, because Sacramento denied Student a FAPE by  
27 not offering sufficient mental health therapy services in this IEP, Student is entitled to relief.

28 //

1 b. Eleventh Grade Individual Transition Plan

2 Student contends the individual transition plan Sacramento offered at the September 2013  
3 IEP team meeting denied her a FAPE. Mr. Hernandez was part of the educationally related  
4 mental health services team that assessed Student while she was in the hospital, was cognizant of  
5 her significant mental health needs, and proposed a revised plan.

6 The revised plan identified the specific colleges Student was interested in attending and  
7 added appropriate transition services, including completing a career exploration assessment  
8 online, attending college workshops, researching “job families” related to her interests, and  
9 interviewing professionals within those areas of interest. The IEP offered two postsecondary  
10 goals, one for specified research in the areas of specific college admissions requirements,  
11 applications, and financial aid or scholarships; and an employment goal to research possible jobs,  
12 internships, and volunteer opportunities.

13 The ALJ observed that Student was again critical of the individual transition plan because  
14 it continued not to include any goals or services to help her advocate for mental health services  
15 after high school, or to understand her underlying mental health issues. However, the individual  
16 transition plan was part of Student’s IEP, which included multiple goals to support her mental  
17 health needs. In addition, during 11th grade, both at Carver and Sierra, Sacramento’s Workability  
18 program was on campus to provide services related to postsecondary goals including job searches  
19 and college tours. The ALJ determined that Student did not present any evidence that  
20 Sacramento’s transition plans violated the law.

21 **III. APPLICABLE LAW**

22 The IDEA requires that all states receiving federal funds for education must provide  
23 disabled school children with a FAPE. 20 U.S.C. § 1412(a)(1)(A). The FAPE, consisting of  
24 special education and related services provided at no cost to the child’s parent or guardian, must  
25 meet state educational standards and be tailored to the child’s unique needs through development  
26 of an IEP. 20 U.S.C. § 1401(9). The IEP is a written statement for each child that is developed  
27 and revised each year by a team comprised of the child’s parents, teachers and other specialists.  
28 20 U.S.C. § 1401(14); § 1414(d)(1)(B). Although the IDEA does not require school districts to

1 provide special education students with the best education available, or provide instruction  
2 services that maximize a student’s abilities, the IEP must be reasonably calculated to provide the  
3 student with some educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v.*  
4 *Rowley*, 458 U.S. 176, 198–200 (1982). School districts are required to provide a “basic floor of  
5 opportunity” and make available, on an individualized basis, such specialized instructional and  
6 related services necessary to provide the requisite educational benefit. *Id.* at 201.

7 Parents who believe that a public school system is not providing a FAPE may unilaterally  
8 remove their disabled child from the public school, place him or her in another educational  
9 institution, and seek tuition reimbursement for the cost of the alternate placement. 20 U.S.C. §  
10 1412(a)(10)(C); *Burlington Sch. Comm. v. Dep’t of Educ.*, 471 U.S. 359, 374 (1985). Parents are  
11 entitled to reimbursement, however, only if the court concludes both that the public placement  
12 violated IDEA and the private school placement arranged by the parents was proper under the  
13 Act. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993). Even then, the Court  
14 retains discretion to reduce a reimbursement award if the equities so warrant. *Forest Grove Sch.*  
15 *Dist. v. T.A.*, 557 U.S. 246–47 (2009). Costs incurred by parents in such alternative placements  
16 may also be reduced or denied if parents fail to provide timely and sufficient notice of the  
17 placement to the school district. *Id.* at 247. Parents must provide notice of the parents’ actual  
18 intent to place the student elsewhere either at the most recent IEP team meeting attended by the  
19 parents before removing their child from public school, or in writing at least ten business days in  
20 advance of the placement. 20 U.S.C. § 1412(a)(10)(C)(1)(bb); 34 C.F.R. § 300.148(d).

21 Reimbursement demands may also be reduced or denied upon a judicial finding of  
22 unreasonableness with respect to placement actions taken by parents. 34 C.F.R. § 300.148(d).  
23 Indeed, in fashioning discretionary equitable relief under the IDEA, the court must “consider all  
24 relevant factors.” *Florence County*, 510 U.S. at 16.

25 An IEP is evaluated in light of the information available to a district at the time it was  
26 developed; it is not judged in hindsight. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir.  
27 1999); *see also Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) (“An IEP is  
28 a snapshot, not a retrospective.”). The IEP must be evaluated in terms of what was objectively

1 reasonable when it was developed. *See Roland M*, 910 F.2d at 992. “Actual educational progress  
2 can (and sometimes will) demonstrate that an IEP provides a FAPE. But to impose the inverse of  
3 this rule—that a lack of progress necessarily betokens an IEP’s inadequacy— would contradict the  
4 fundamental concept that ‘[a]n IEP is a snapshot, not a retrospective.’” *Lessard v. Wilton*  
5 *Lyndeborough Coop. School Dist.*, 518 F.3d 18, 29 (1st Cir. 2008). Thus, to determine whether a  
6 school developed adequate plans to offer Student a FAPE, the Court must consider the  
7 circumstances surrounding the formulation of the proposed plans.

#### 8 **IV. STANDARD OF REVIEW**

9 Courts reviewing an IDEA due process appeal must review the records of the  
10 administrative proceedings; hear additional evidence at the request of a party; and grant such  
11 relief as it deems appropriate, basing its decision on the preponderance of the evidence. 20  
12 U.S.C. § 1415(i)(2)(C). The preponderance of evidence standard is not, however, an invitation  
13 for reviewing courts to discount the administrative proceedings. *Bd. of Educ. of the Hendrick*  
14 *Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982). Instead, reviewing courts must  
15 give due weight to an administrative decision’s findings of fact and avoid substituting their  
16 opinions of sound educational policy for those of school authorities. *Id.* While reviewing courts  
17 determine for themselves how much deference is due, they must carefully consider administrative  
18 findings and assess whether they are “thorough and complete.” *Capistrano Unified School Dist.*  
19 *v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995). “The amount of deference accorded the hearing  
20 officer’s findings increases where they are ‘thorough and careful.’” *Id.* (citing *Union Sch. Dist. v.*  
21 *Smith*, 15 F.3d 1519, 1524 (9th Cir. 1994)). All other findings may be accepted or rejected in the  
22 court’s discretion. *Id.*

#### 23 **V. ANALYSIS**

##### 24 **A. Sacramento’s Motion for Summary Judgement**

25 Sacramento has filed a motion for summary judgment before this Court, asserting that the  
26 ALJ improperly concluded that Sacramento should have provided services beyond what was  
27 necessary for Student to benefit from her education. (ECF No. 18 at 5.) Specifically, Sacramento  
28 argues that the ALJ applied an incorrect legal standard and required that Sacramento provide



1 greater services than necessary for Student to benefit from her education. (ECF No. 18 at 15.)  
2 Defendants responded by asking this Court to uphold the ALJ’s decision and to order various  
3 forms of relief on Defendants’ counterclaims. (ECF No. 19 at 31.)

4 *i. Legal Standard Applied by the ALJ*

5 Sacramento argues that the ALJ applied an inappropriate standard by requiring that  
6 Sacramento address Student’s mental illness on a fundamental therapeutic level. (ECF No. 18 at  
7 20.) Sacramento asserts that a school district is required to provide only a “basic floor of  
8 opportunity” that provides “personalized instruction with sufficient support services to permit the  
9 child to benefit educationally from that instruction.” (ECF No. 18 at 17 (citing *Rowley*, 458 U.S.  
10 at 203).) Sacramento further asserts that the Ninth Circuit has “drawn a bright line between the  
11 educational needs and medical needs that would be necessary regardless of a student’s  
12 educational needs.” (ECF No. 18 at 18 (citing *Clovis Unified Scho. Dist. v. Cali. Office of Admin.*  
13 *Hearings*, 903 F.2d 635 (9th Cir. 1990).)

14 Sacramento states that Student received an educational benefit from her IEP and takes  
15 issue with the ALJ’s finding that “progress is not obtained merely by having Student superficially  
16 act appropriately in school, but for her to benefit at a fundamental therapeutic level.” (ECF No.  
17 18 at 20 (citing AR 1114).) Sacramento argues that the law does not require an IEP to maximize  
18 a student’s education nor to make a student’s educational benefit the same as the benefit received  
19 by a non-disabled child. (ECF No. 18 at 21.) Rather, Sacramento reasons a school is only  
20 obligated to provide an educational benefit.

21 While Sacramento correctly sets forth the legal requirements, the Court finds that the ALJ  
22 is correct that Sacramento did not meet the requirements of *Rowley* and its progeny.

23 Sacramento’s selective excerpts of the ALJ’s findings do not put forth the entire picture. The  
24 ALJ held that Sacramento itself identified that Student’s emotional needs were interrelated to her  
25 educational ones, stating that:

26 Student’s educationally related mental health goals in the September 2013 IEP  
27 were offered to address her needs in vital social emotional areas related to her  
28 mental health, including interpersonal communication, and learning strategies to  
move from feelings of hopelessness to feelings of value and self-worth on a daily  
basis. Sacramento determined that these needs were educationally related. Progress

1 on the goals is therefore an IEP expectation. That progress is not obtained merely  
2 by having Student superficially act appropriately in school, but for her to benefit at  
3 a fundamental therapeutic level.

4 AR 1114. The ALJ makes clear that “educational benefit” in this sense does not mean an  
5 educational benefit identical to a student without disabilities, but a benefit that is more  
6 than “superficial” and is in line with the goals determined by the school district itself  
7 within the IEP. *Seattle Sch. Dist. No. 1 v B.S.*, 82 F.3d 1493 (9th Cir. 1996) (a child’s  
8 education needs encompass social and emotional needs). The ALJ’s comment that  
9 Sacramento needed to provide services that allowed Student to benefit “on a fundamental  
10 therapeutic level” was not the legal standard applied, but rather was the measure of what  
11 type and intensity of services Student required in order to receive educational benefit.  
12 *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (instructing the court to consider  
13 the IEP goals and “ask whether these methods were reasonably calculated to confer [the  
14 student] with a meaningful benefit.”).

15 Sacramento further supports its claim that the ALJ applied an incorrect standard by  
16 pointing the Court to *Ashland Sch. Dist v. Parents of Student E.H.*, 587 F.3d 1175 (9th  
17 Cir. 2009.) In that case, an ALJ’s decisions was overturned where the ALJ ordered  
18 reimbursement for residential placement but the Court determined that the residential  
19 placement was made for primarily medical and not educational purposes. (ECF No. 18 at  
20 22.) Sacramento’s comparison to this case only further indicates that they have  
21 misinterpreted the ALJ’s findings in this case. Irrespective of the Defendants’ motives for  
22 seeking residential placement, the facts clearly indicate that Student’s educational benefit  
23 was substantially intertwined with her mental state. AR 1114. The record makes clear  
24 that the goal of Student’s therapy was not to simply prevent superficial outbursts at school  
25 and at home, but to address underlying issues that prevented Student from taking  
26 advantage of any educational benefit provided by her IEP. The Court does not find this  
27 comparison persuasive.

28 Sacramento also argues that, had the ALJ applied the appropriate standard,

1 Sacramento's placement options would have been appropriate. However, the Court need  
2 not and should not engage in a re-review of Student's placement options. The Court is  
3 instructed to review the administrative proceedings and avoid substituting its opinions of  
4 sound education policy for those involved in the administrative review process. *Rowley*,  
5 458 U.S. at 206. Here, the Court finds that the ALJ applied the appropriate standard to the  
6 facts and therefore declines to revisit Sacramento's restatements of its argument in favor  
7 of its placement policy.

8 Finally, Sacramento maintains that the ALJ erred in concluding that Sacramento was  
9 required to provide sufficient services to prevent Student from being hospitalized. (ECF No. 18  
10 at 26.) While the Court agrees that perhaps the wording in the ALJ's decision summary is  
11 unclear, a comprehensive review of the administrative record indicates that the ALJ imposed no  
12 such requirement. Sacramento protests the ALJ's statement:

13  
14           Regardless of where Student's acts of self-harm occurred, it was incumbent upon  
15           Sacramento to offer intensified mental health services for Student to work daily on  
16           her underlying mental health and social emotional needs, make meaningful  
                  progress in those areas, and *avoid a continued cycle of repeated hospitalizations  
                  and resulting loss of educational benefit.*

17 AR 1115 (emphasis added). This statement should not be viewed in isolation. In the Court's  
18 reading of the facts, the thrust of the ALJ's analysis was whether Student could receive an  
19 educational benefit from a FAPE that did not address Student's mental health concerns in a  
20 meaningful way. The ALJ determined that Sacramento itself found that Student's mental health  
21 concerns were part and parcel of an effective IEP plan and were therefore enumerated as goals  
22 within her IEP. *See* AR 1115 ("Because Student's fundamental mental health needs were  
23 educationally related, Sacramento was not entitled to wait until Student acted out in school to  
24 increase the intensity of the related service."). The reality is that the ALJ never indicated that  
25 Sacramento was required to provide Student with residential placement or keep Student from  
26 being hospitalized, rather the ALJ found that Sacramento failed to address Student's needs by  
27 treating Student's mental health as a superficial problem after having identified consistent therapy  
28 as part of Student's educational goals. Student's hospitalization was merely evidence to the ALJ

1 that Sacramento's dual placement offering was not reasonably calculated to provide an  
2 educational benefit.

3  
4 *ii. Material Factual Errors by the ALJ*

5 Sacramento argues the ALJ relied upon significant factual errors in her determination and  
6 that these errors should prompt the Court to give less deference to the ALJ's findings. (ECF No.  
7 18 at 27.) The ALJ stated as follows:

8 Student's experts were also persuasive that she needed mental health therapy  
9 supports in some form on a daily basis but none were offered. The fact that  
10 Student hid or masked her feelings meant that Sacramento could not rely on  
11 Student to self-report, and needed to work with her on a more intensive therapeutic  
12 level, particularly in regard to transitioning between home and school. There was  
13 no provision in the offer for any more than 30 minutes of weekly consultation  
14 among all of the proposed mental health parties, including the family and  
15 Student's private therapist. For example, Sacramento did not establish how  
16 Student would be expected to work daily on a self-esteem goal without direct daily  
17 access to a confidential therapist, rather than the classroom teacher.

18 AR 1114. Sacramento objects to this finding, stating that Student "would receive four therapy  
19 sessions per week, daily placement in a therapeutic setting at Sierra School, and daily access to a  
20 therapist as needed." (ECF No. 18 at 28.)

21 With this objection, Sacramento glosses over facts that are clearly pertinent to this case.  
22 Clearly, the ALJ was aware that Student would have access to four therapy sessions per week.  
23 See AR 1103. However, the ALJ's statement is based on her factual finding that those therapy  
24 sessions would be split between two schools and at least two different therapists and that one of  
25 those therapy sessions would be in a group setting. AR 1103. Based on the ALJ's review of  
26 Student's needs, the ALJ found that this type of approach would not be effective for Student.  
27 Sacramento's contention that this is a factual misstatement rather than a difference in  
28 interpretation of the facts is disingenuous. In any event, the Court finds that it is an insufficient  
justification for the Court to grant less deference to the ALJ's determination.

Sacramento further states that the ALJ made a factual error by relying on the testimony of  
Paula Adams, Student's private therapist, who stated that there was a communication problem  
with one of Student's school therapists that Ms. Adams believed would make therapy ineffective

1 for Student. (ECF No. 18 at 27–28.) Sacramento argues that it was actually Ms. Adams who was  
2 difficult to get in touch with and that Student’s school therapists recognized the importance of  
3 collaboration. (ECF No. 18 at 28.) Sacramento states that the ALJ ignored that Student’s two  
4 school therapists intended to consult for thirty minutes every week. (ECF No. 18 at 28.)  
5 Sacramento further argues that the ALJ improperly discounted the testimony of Ms. Peterson, one  
6 of Student’s school therapists, and insists that Student’s therapeutic relationship with Ms.  
7 Peterson was better than the ALJ found it to be. Sacramento maintains that the ALJ’s tendency to  
8 discount these facts indicates that her decision was based on “unsupported speculation.” (ECF  
9 No. 18 at 28.)

10 These arguments are tiresome attempts to chip away at the reasoning of the ALJ. The  
11 truth of the matter is that the ALJ produced a decision of 39 pages. The Court found her analysis  
12 to be “thorough and complete” as required by the Ninth Circuit. *Capistrano Unified School Dist.*  
13 *v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995). It is simply not the role of the Court to discount  
14 the ALJ’s findings of fact simply because Sacramento can point to singular instances where it  
15 believes that the evidence supports a conclusion in the opposite direction. *Rowley*, 458 U.S. at  
16 206. Sacramento has pointed to nothing more than differences in opinion in the persuasiveness of  
17 certain witnesses over others. Because the Court has found that the ALJ’s reasoning was  
18 thorough and careful, it is not at liberty to simply accept or reject those findings based on the  
19 differing view of the appealing party. *Capistrano*, 59 F.3d at 891. Moreover, Sacramento’s  
20 protests against the ALJ’s weighing of the evidence is particularly ineffective where the Ninth  
21 Circuit has determined that even greater deference is due to an ALJ’s determination regarding the  
22 credibility of witnesses. *Seattle Sch. Dist., No. 1*, 82 F.3d at 1499.

23 B. Defendants’ Opening Brief

24 i. *ALJ Decision*

25 In addition to their opposition to Sacramento’s motion for summary judgment, Defendants  
26 submitted an opening brief. (ECF No. 19.) First, the brief recounts many arguments that  
27 Defendants set forth in their opposition to Sacramento’s motion for summary judgment.  
28 However, they seek three specific determinations from the Court.

1 First, Defendants argue that the ALJ’s decision is due substantial deference because it was  
2 thorough and careful. (ECF No. 19 at 11–12.) An administrative decision is “thorough and  
3 careful” where the ALJ “participates in the questioning of witnesses and writes a decision  
4 containing a complete factual background as well as a discrete analysis supporting the ultimate  
5 conclusion.” *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 942 (9th Cir. 2007) (internal  
6 citations omitted). The Court has reviewed the evidence in this case, as well as the 39 page  
7 decision and reasoning by the ALJ and concludes, as previously stated in Section V.A.i., supra,  
8 that the ALJ in this case made a thorough and careful decision in this case. Therefore, the Court  
9 owes deference to the ALJ’s decision. *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1524 (9th Cir.  
10 1994)

11 Second, Defendants ask the Court to confirm that the ALJ’s finding that Sacramento’s  
12 September 23, 2013 IEP failed to offer adequate and appropriate mental health services to address  
13 Student’s educational needs. (ECF No. 19 at 13–21.) A child has received a FAPE where the  
14 program offered “(1) addresses the child’s unique needs, (2) provides adequate support services  
15 so the child can take advantage of the educational opportunities, and (3) is in accord with the  
16 individualized education program.” *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884,  
17 893 (9th Cir. 1995). The facts in this case indicate that the September 23, 2013, IEP was not  
18 “reasonably calculated to provide educational benefit” to Student. *Rowley*, 458 U.S. at 206–207.  
19 Sacramento itself identified that Student’s mental challenges impacted her ability to learn. AR  
20 1114. The Court has reviewed the administrative record and the decision of the ALJ and finds  
21 that the ALJ was correct in concluding that the September 23, 2013, IEP failed to offer adequate  
22 and appropriate mental health services to Student. The Court concurs that Student’s performance  
23 history, mental health history, and determinations made at Student’s IEP reviews support the  
24 ALJ’s conclusion that Student required therapy from one experienced therapist, rather than two  
25 separate therapists at two separate school campuses. *See* AR 1114.

26 Third, Defendants ask the Court to confirm that the ALJ’s finding that Sacramento’s dual  
27 placement plan was “not reasonably calculated” to provide education benefit to Student. (ECF  
28 No. 19 at 21– 22.) For the same reasons stated above, the Court concurs with the ALJ’s finding

1 that Sacramento's FAPE was not reasonably calculated to allow Student to progress. In reaching  
2 this conclusion, the ALJ correctly applied the applicable law in finding that Sacramento was  
3 responsible for addressing Student's mental health needs as required in order for Student to  
4 receive the benefit of a FAPE. However, to the extent Defendants request that the Court make a  
5 finding against Sacramento outside the confines of the ALJ's determination, the Court declines to  
6 do so.

7 Finally, Defendants seek a finding from this Court that the remedy ordered by the ALJ  
8 was appropriate and in the scope of her discretion. (ECF No. 22-24.) The ALJ determined that:

9 As a compensatory equitable remedy, Parents are therefore entitled to  
10 reimbursement for the costs of their travel and Student's nonpublic school tuition  
11 and residential treatment placement, and related services, from October 9, 2013,  
12 through the end of the regular 2013 - 2014 school year in June 2014. As an  
13 additional equitable remedy, Sacramento shall continue to reimburse Parents for  
14 those costs through the end of the 2014 summer extended school year. Sacramento  
15 maintains that it should not be obligated to pay

16 AR 1122. Sacramento protests this award, arguing that Defendants' had "unclean hands" and did  
17 not participate in the special education process in good faith. (Compl., ECF No. 1 at 10.)

18 Sacramento misses the mark on this dispute. The ALJ made no determination that Student  
19 should have been placed in residential placement to meet the requirements of the IDEA. Rather,  
20 the salient point of the ALJ's findings was that Student was denied a FAPE and that her parents  
21 provided an appropriate placement for Student when it became clear that her educational needs  
22 were not being met. AR 1122. School districts may be ordered to provide compensatory  
23 education or additional services to a pupil who has been denied a FAPE. *Student W. v. Puyallup*  
24 *School District*, 31 F.3d 1489, 1496 (9th Cir. 1994). Student received both educational and  
25 therapeutic services at Falcon Ridge. AR 1122. It is true that Sacramento would not have been  
26 required to provide a FAPE with such a high level of services, even though Defendants asked for  
27 it. However, the inquiry in this instance is not whether Sacramento needed to provide residential  
28 placement but whether the solution Sacramento did offer was sufficient. It was not. Therefore,  
Sacramento is responsible for reimbursing Defendants for the costs they incurred providing  
educational services to their child within the meaning of the IDEA.

1 ii. *Defendants' Counterclaims*

2 Defendants also use their opening brief to ask this Court to grant summary judgement as  
3 to their second counterclaim, asserting that Sacramento's failure to provide residential placement  
4 to Student violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*  
5 ("Section 504"). (ECF No. 19 at 24–30.) Defendants also seek summary judgment as to their  
6 second counterclaim, asking the Court to award legal fees to Defendants as the prevailing party.  
7 (ECF No. 19 at 30–31.)

8 First, Defendants bring a counterclaim against Sacramento, arguing that its actions  
9 violated Section 504. (Answer, ECF No. 11 at ¶¶ 72 – 81.) An individual bringing a claim under  
10 Section 504 must show: "(1) he is an individual with a disability; (2) he is otherwise qualified to  
11 receive the benefit; (3) he was denied the benefits of the program solely by reason of his  
12 disability; and (4) the program receives federal financial assistance." *Duvall v. Cty. of Kitsap*,  
13 260 F.3d 1124, 1135 (9th Cir. 2001). Sacramento "is liable for damages for violating § 504 if it  
14 failed to provide [Student] a reasonable accommodation that [she] needed to enjoy meaningful  
15 access to the benefits of a public education, *and did so with deliberate indifference.*" *Mark H. v.*  
16 *Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010) (emphasis added). "Deliberate indifference  
17 requires both knowledge that a harm to a federally protected right is substantially likely, and a  
18 failure to act upon that likelihood." *Lovell v. Chandler*, 303 F.3d 1039, 1056 (9th Cir. 2002)  
19 (internal citations omitted).

20 Based on the administrative records of this case, the Court finds that Defendants have  
21 failed to prove that Sacramento exhibited deliberate indifference toward Student in creating a  
22 FAPE that would accommodate her needs. The ALJ limited her finding against Sacramento to  
23 the September 27, 2013 IEP alone. AR 1115. The ALJ found, and the Court concurs, that  
24 Sacramento provided appropriate academic instruction for the 10th and 11th grades. AR 1109.  
25 The ALJ also determined, and the Court concurs, that Sacramento met the statutory requirements  
26 to provide Student a FAPE with its June 2013 IEP. AR 1112. As for the September 27, 2013  
27 IEP, while it was inadequate to provide Student with a FAPE, the fact remains that Sacramento  
28 did not deliberately refuse to provide Student with an IEP. *Duvall v. Cty. of Kitsap*, 260 F.3d at



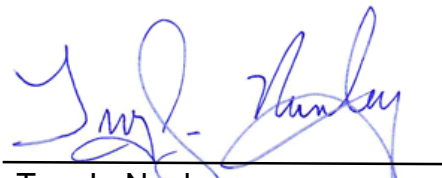
1 1140 (finding that the school district's conduct must be more than negligent, but must involve an  
2 element of deliberateness). Defendants have not provided evidence of a deliberate indifference in  
3 Sacramento's actions with respect to the September 2013 IEP. On these grounds, the Court  
4 denies Defendants' motion for summary judgment as to its second counterclaim.

5 With respect to Defendants' third counterclaim, Defendants argue that they are entitled to  
6 attorneys' fees as the prevailing party in their Section 504 action. (ECF No. 19 at 30–31.)  
7 Because the Court did not find in favor of Defendants' motion for summary judgment on their  
8 Section 504 counterclaim, the Court similarly cannot award attorneys' fees.

9 **VI. CONCLUSION**

10 For the foregoing reasons, the Court DENIES Sacramento's motion for summary  
11 judgment and finds that the ALJ's Decision is substantially supported by the administrative  
12 record and thus AFFIRMS the ALJ's Decision. The Court further DENIES Defendants' motion  
13 for summary judgment as to Defendants' second and third counterclaims.

14  
15 Dated: October 6, 2016

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19 Troy L. Nunley  
20 United States District Judge  
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