

Counsel for PLAINTIFFS

A.P., by and through her guardians ad litem,	) CASE NO.: 2:19-CV-7965-MWF
V.P. and B.P.; V.P. and B.P., Individuals,	) (SSx)
	)
Plaintiffs,	)
v.	) PLAINTIFFS' NOTICE OF
	) MOTION AND MOTION FOR
PASADENA UNIFIED SCHOOL DISTRICT,	) SUMMARY JUDGMENT;
	) MEMORANDUM OF POINTS
Defendant.	) AND AUTHORITIES
	)
	)
	) DATE: November 16, 2020
	) TIME: 10:00 A.M.
	) CTRM: 5A
	) JUDGE: HON. MICHAEL W.
	) FITZGERALD
	)
	)

TO DEFENDANT AND THEIR ATTORNEYS OF RECORD:

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. PROCEDURAL AND FACTUAL HISTORY	2
III. LEGAL ARGUMENT	7
A. THE DISTRICT FAILED TO ASSESS STUDENT IN VIOLATION OF ITS CHILD FIND OBLIGATIONS, THEREBY DENYING STUDENT NECESSARY SPECIAL EDUCATION SUPPORTS AND SERVICES	7
1. Evidence Presented at the Administrative Due Process Hearing Established that District Failed to Assess Student Despite Actual Knowledge of Her Disability	9
2. The Administrative Findings Concerning Child Find Should Not Receive “Due Weight.”	11
B. THE DISTRICT FAILED TO CONDUCT A POST-SECONDARY TRANSITION ASSESSMENT, AND FAILED TO OFFER APPROPRIATE POST-SECONDARY TRANSITION SERVICES	14
1. The District Did Not Conduct an Age-Appropriate Transition Assessment.....	15
2. The Lack of Assessment and District’s Transition Plan in the IEP Resulted in Educational Harm	15
3. The Administrative Findings Concerning Transition Supports Should Not Receive “Due Weight.”	18
C. DISTRICT FAILED TO MAKE A SPECIFIC OFFER OF PLACEMENT, THEREBY PROCEDURALLY DENYING STUDENT A FAPE	20

1	1. District’s Offer of Two Distinct School Placements Precluded	
2	Meaningful Participation and Informed Consent to the IEP	20
3	2. The Administrative Findings Concerning Clarity of Offer Should Not	
4	Receive “Due Weight.”	23
5	D. THE ADMINISTRATIVE DECISION SHOULD BE REVERSED,	
6	THUS ENTITLING STUDENT TO REIMBURSEMENT	24

TABLE OF AUTHORITIES

SUPREME COURT CASES

<i>Florence County School District Four v. Carter</i> , 510 U.S. 7, 13-14 (1993).....	25
<i>School Committee of Town of Burlington, Mass. v. Department of Educ.</i> , 471 U.S. 359, 369-70 (1985)	24
<i>Smith v. Robinson</i> , 468 U.S. 992, 1018 (1984).	8

NINTH CIRCUIT CASES

<i>Adams v. State of Oregon</i> , 195 F.3d 1141, 1149 (9th Cir. 1999)	8
<i>Amanda J. ex rel. Annette J. v. Clark Cnty. Sch. Dist.</i> , 267 F.3d 877, 887-89 (9th Cir. 2001).	7
<i>Capistrano Unified Sch. Dist. v. Wartenberg</i> , 59 F. 3d 884, 891 (9th Cir. 1995)....	7, 11
<i>Hacienda La Puente Sch. Dist. of Los Angeles v. Honig</i> , 876 F.2d 487, 495 (9th Cir. 1992)	14
<i>L.M. v. Capistrano Unified School Dist.</i> , 556 F.3d 900, 909 (9th Cir. 2009)	16
<i>N.B. v. Hellgate Elementary School District</i> , 541 F.3d 1202 (9th Cir. 2008)	12
<i>Ojai Unified School Dist. v. Jackson</i> , 4 F.3d 1467, 1471-72 (9th Cir. 1993)	7
<i>Pasatiempo v. Aizawa</i> , 103 F.3d 796, 802 (9th Cir. 1996)	12
<i>Rachel H. v. Dept. of Ed., State of Hawaii</i> , 868 F.3d 1085, 1087, 1092 (9th Cir. 2017)	22, 23
<i>Timothy O. v. Paso Robles Unified School Dist.</i> , 822 F.3d 1105 (9th Cir. 2016).....	8, 12, 13
<i>Union Sch. Dist. v. Smith</i> , 15 F.3d 1519, 1526 (9th Cir. 1994)	20, 21
<i>W.G., et al. v. Board of Trustees of Target Range School Dist.</i> , 960 F.2d 1479, 1484 (9th Cir. 1992)	9

OTHER CIRCUIT CASES

<i>A.K. ex rel. J.K. v. Alexandria City School Board</i> , 484 F.3d 672, 681 (4th Cir. 2007).....	21, 23
---	--------

1	<i>Gagliardo v. Arlington Central School District</i> , 489 F.3d 105, 113-15 (2d. Cir.	
2	2007)	25
3	<i>RB ex rel. Parent v. Mastery Charter School</i> , 762 F.Supp.2d 745, 762 (E.D. Pa.	
4	2010).....	14
5	<i>Lessard v. Wilton-Lyndeborough Coop. School Dist.</i> , 518 F.3d 18 (1st Cir. 2008)	
6		19
7	<i>M.M. v. New York City Dept. of Ed.</i> , 655 Fed.Appx. 868 (2d Cir. 2016)	18
8	<u>DISTRICT COURT CASES</u>	
9	<i>Carrie I. ex rel. Greg I. v. Dep't of Educ., Hawaii</i> , 869 F.Supp.2d 1225 (D. Haw.	
10	2012)	16, 19
11	<i>Dept. of Educ., Haw. v. Cari Rae S.</i> , 158 F. Supp. 2d 1190 (D. Haw. 2001)..1, 8, 12	
12	<i>Dracut Sch. Comm. V. Bureau of Special Educ. Appeals of Mass. Dep't of Elem. &</i>	
13	<i>Secondary Educ.</i> , 737 F.Supp.2d 35, 51 (D. Mass. 2010).....	19
14	<i>Forest Grove Sch. Dist. v. Student</i> , 2014 WL 2592654, at *29 (D. Or. 2014)	15
15	<i>Glendale Unified School Dist. v. Almasi</i> , 122 F.Supp.2d 1093, 1106-08 (C.D. Cal.	
16	2000)	20, 21
17	<i>Katherine G. ex rel Cynthia G. v. Kentfield Sch. Dist.</i> , 261 F. Supp. 2d. 1159, 1167	
18	(N.D. Cal. 2003)	7
19	<i>M.M. v. New York City Dept. of Ed.</i> , Case No. 1:14-cv-01542-GBD (S.D.N.Y.	
20	Mar. 18, 2015)	18
21	<i>S.G.W., et al. v. Eugene School Dist.</i> , Case No. 6:16-cv-01612-AA at *12-14 (D.	
22	Or. 2017)	15, 16
23	<i>Simmons v. Pittsburg Unified School Dist.</i> (N.D. Cal. 2014) 2014 WL 2738214 ...8,	
24	14	
25	<i>Virginia S. v. Dept. of Educ.</i> , 2007 U.S. Dist. Lexis 1518 at *24-25 (D. Hawaii,	
26	Jan. 8, 2007)	17, 19

STATE ADMINISTRATIVE CASES

Parents on Behalf of Student v. Poway Unified School District, (OAH CA 2018)

OAH Case No. 2018060763, 201808004821, 22

FEDERAL STATUTES

20 U.S.C. § 1400(c)(14)15

20 U.S.C. § 1400(d)(1)(A)1

20 U.S.C. § 1400(d)(4)1

20 U.S.C. § 1412(a)(3)1

20 U.S.C. § 1412(a)(3)(A)8

20 U.S.C. § 1412(a)(10)(C)(ii)24

20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb)14

20 U.S.C. § 1415(i)(2)(C)7

20 U.S.C. § 1415(f)(3)(E)(ii)8

29 U.S.C. § 7943

FEDERAL REGULATIONS

34 C.F.R. Part 1043

34 C.F.R. § 300.43(a)(1)15

34 C.F.R. § 300.111(a)(1)(i)8

34 C.F.R. § 300.111(c)8

34 C.F.R. § 300.148(c)24

34 C.F.R. § 300.320(b)15

34 C.F.R. § 300.320(b)(1)-(2)14

34 C.F.R. § 300.321(b)(3)20

CALIFORNIA STATE LAW

Cal. Ed. Code § 5630314

Cal. Ed. Code § 56345(a)(8)15

Cal. Ed. Code § 56345(a)(8)(A)15

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Webb, J. T., Amend, E. R., Webb, N. E., Goerss, J., Beljan, P., & Olenchak, F. R. (2005). *Misdiagnosis and dual diagnoses of gifted children and adults: ADHD, bipolar, OCD, Asperger's, depression and other disorders*. 125-136, Scottsdale, AZ: Great Potential Press 1

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. PROCEDURAL AND FACTUAL HISTORY	2
III. LEGAL ARGUMENT	7
A. THE DISTRICT FAILED TO ASSESS STUDENT IN VIOLATION OF ITS CHILD FIND OBLIGATIONS, THEREBY DENYING STUDENT NECESSARY SPECIAL EDUCATION SUPPORTS AND SERVICES	7
1. Evidence Presented at the Administrative Due Process Hearing Established that District Failed to Assess Student Despite Actual Knowledge of Her Disability	9
2. The Administrative Findings Concerning Child Find Should Not Receive “Due Weight.”	11
B. THE DISTRICT FAILED TO CONDUCT A POST-SECONDARY TRANSITION ASSESSMENT, AND FAILED TO OFFER APPROPRIATE POST-SECONDARY TRANSITION SERVICES	14
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2. The Lack of Assessment and District’s Transition Plan in the IEP Resulted in Educational Harm	15
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C. DISTRICT FAILED TO MAKE A SPECIFIC OFFER OF PLACEMENT, THEREBY PROCEDURALLY DENYING STUDENT A FAPE	20

1	1. District’s Offer of Two Distinct School Placements Precluded	
2	Meaningful Participation and Informed Consent to the IEP	20
3	2. The Administrative Findings Concerning Clarity of Offer Should Not	
4	Receive “Due Weight.”	23
5	D. THE ADMINISTRATIVE DECISION SHOULD BE REVERSED,	
6	THUS ENTITLING STUDENT TO REIMBURSEMENT	24

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<i>Hacienda La Puente Sch. Dist. of Los Angeles v. Honig</i> , 876 F.2d 487, 495 (9th Cir. 1992)	14
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<i>Pasatiempo v. Aizawa</i> , 103 F.3d 796, 802 (9th Cir. 1996)	12
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2	2007)	25
3	<i>RB ex rel. Parent v. Mastery Charter School</i> , 762 F.Supp.2d 745, 762 (E.D. Pa.	
4	2010).....	14
5	<i>Lessard v. Wilton-Lyndeborough Coop. School Dist.</i> , 518 F.3d 18 (1st Cir. 2008)	
6		19
7	<i>M.M. v. New York City Dept. of Ed.</i> , 655 Fed.Appx. 868 (2d Cir. 2016)	18
8	<u>DISTRICT COURT CASES</u>	
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10	2012)	16, 19
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15	<i>Glendale Unified School Dist. v. Almasi</i> , 122 F.Supp.2d 1093, 1106-08 (C.D. Cal.	
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20	Mar. 18, 2015)	18
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22	Or. 2017)	15, 16
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24	14	
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20 U.S.C. § 1400(d)(1)(A)1

20 U.S.C. § 1400(d)(4)1

20 U.S.C. § 1412(a)(3)1

20 U.S.C. § 1412(a)(3)(A)8

20 U.S.C. § 1412(a)(10)(C)(ii)24

20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb)14

20 U.S.C. § 1415(i)(2)(C)7

20 U.S.C. § 1415(f)(3)(E)(ii)8

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34 C.F.R. Part 1043

34 C.F.R. § 300.43(a)(1)15

34 C.F.R. § 300.111(a)(1)(i)8

34 C.F.R. § 300.111(c)8

34 C.F.R. § 300.148(c)24

34 C.F.R. § 300.320(b)15

34 C.F.R. § 300.320(b)(1)-(2)14

34 C.F.R. § 300.321(b)(3)20

CALIFORNIA STATE LAW

Cal. Ed. Code § 5630314

Cal. Ed. Code § 56345(a)(8)15

Cal. Ed. Code § 56345(a)(8)(A)15

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I. INTRODUCTION

A primary purpose of the Individuals with Disabilities Education Act (“IDEA”) is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. §1400(d)(1)(A). A further stated purpose in the IDEA is “to assess, and ensure the effectiveness of, efforts to educate children with disabilities.” 20 U.S.C. §1400(d)(4). To this end, the IDEA places an affirmative duty on school districts to identify, locate, and evaluate all children with disabilities, regardless of the severity of their disabilities. 20 U.S.C. §1412(a)(3); *Dept. of Educ., Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1193 (D. Haw. 2001) (“Cari Rae”).

The instant case demonstrates the grave consequences of not adhering to the stated purposes of the IDEA and affirmative duties provided therein. Plaintiff and Student, A.P., a gifted child plagued with significant mental health and social-emotional deficits, was denied the protections of the IDEA when she needed them most. Children with A.P.’s profile are overlooked for needed supports because their intelligence buoys performance. When their associated learning and social-emotional needs are not timely identified and addressed, the mental health ramifications can be deadly.¹ Here, despite clear evidence of A.P.’s need for special education supports in fall 2017, Defendant Pasadena Unified School District (“District”) failed to assess her upon learning of her disabilities, and therefore failed to offer special education and related services. Several months

¹ Webb, J. T., Amend, E. R., Webb, N. E., Goerss, J., Beljan, P., & Olenchak, F. R. (2005). *Misdiagnosis and dual diagnoses of gifted children and adults: ADHD, bipolar, OCD, Asperger's, depression and other disorders*. 125-136, Scottsdale, AZ: Great Potential Press.

1 later, A.P. attempted to take her own life. Only then did the District offer to
2 evaluate her for special education.

3 Following assessments, District convened an individualized education
4 program (“IEP”) team meeting in which it failed to offer A.P. an appropriate plan
5 to prepare her for further education, employment, and independent living.
6 District’s IEP offer further violated the procedural mandates of the IDEA to ensure
7 A.P. was provided a clear offer of educational placement. As a result, Parents V.P.
8 and B.P. were deprived of their rights to meaningfully participate in the IEP
9 process, and A.P. denied a free appropriate public education (hereinafter “FAPE”).

10 In November 2018, Parents filed a request for an administrative due process
11 hearing with the California Office of Administrative Hearings (“OAH”), alleging
12 denial of educational rights under the IDEA and California law. Parents were
13 unsuccessful in their efforts at hearing. Accordingly, A.P. and Parents (collectively
14 “Plaintiffs”) request modified *de novo* review of the record and a determination
15 that the administrative decision is in error. Plaintiffs allege that a review of the
16 record will also establish that the preponderance of the evidence supports recovery
17 of private costs for appropriate educational placement and psychological services.

18 **II. PROCEDURAL AND FACTUAL HISTORY**

19 Student, A.P., is a gifted student that also struggles with specific learning
20 disorders, Generalized Anxiety Disorder, Social Anxiety Disorder, and Major
21 Depression Disorder. She therefore presents as a “twice-exceptional” learner, one
22 who is intellectually gifted but suffers a form of disability characterized by
23 asynchronous development (discrepancy between cognitive, emotional, and
24 physical development). Symptoms of A.P.’s condition have historically included
25 debilitating depression and anxiety, associated somatic symptoms characterized by
26 migraines and stomach aches, and dermatillomania (obsessive skin picking). A.P.
27 has also exhibited deficits in modulating sensory input, navigating social
28 interactions, and reading nonverbal social cues, all of which exacerbate her

1 anxiety, depression, and isolation. (AR-298-321).² A.P. has traditionally engaged
 2 in school refusal and non-attendance due to her crippling anxiety and depression.
 3 (AR-799:19-800:18; 801:6-802:6).

4 Student enrolled in District in August 2017 for the tenth grade following
 5 partial attendance at two different private high schools the previous year where she
 6 exhibited anxiety, depression, and school refusal. (AR-799-800; 1080:10-20;
 7 1081:21-1082: 11). A.P. worked with her treating psychologist for several months
 8 prior to the enrollment, and A.P. was excited to start school. (AR-1084:25-1085:2;
 9 1087:6-1088:3). Following enrollment, Parents spoke with a District counselor
 10 about Student's background and educational history. (AR-1177:24-1179:14). A
 11 subsequent Section 504 meeting was scheduled by District to discuss
 12 accommodations for Student.³ (AR-1180:5-16). The meeting was held on
 13 September 19, 2017, and included input from two clinical psychologists retained
 14 by Parents that treated Student and conducted comprehensive assessment prior to
 15 the meeting. Parents provided this assessment to District in seeking help from the
 16 District to address A.P.'s needs (AR-804:7-15). The meeting resulted in a 504 plan
 17 document that contained multiple references to A.P.'s diagnoses and their
 18 manifestations in the educational environment, including school avoidance,
 19 inability to manage stress and produce school work, and major depression
 20 triggered by anxiety from overwhelming workload. (AR-332-337; 1181:2-12).
 21 District did not assess Student for special education eligibility at this time. (AR-
 22 802:22-803:3; 810:9-14).

23
 24
 25 ² The Administrative Record is cited herein as "AR-[page #]: [line or paragraph
 26 #]." Citations correspond to pagination found in upper-right corner of the
 27 Administrative Record.

28 ³ Section 504 meetings are in reference to Section 504 of Rehabilitation Act of
 1973, a federal civil rights law prohibiting discrimination against students with
 disabilities. *See* 29 U.S.C. § 794; 34 C.F.R. Part 104.

1 Following the 504 meeting, A.P. experienced signs of significant anxiety
 2 and school refusal. She exhibited behaviors such as refusing to leave her room,
 3 refusing to take medication, refusing to eat, and excessive skin picking. (AR-
 4 811:16-812:5; 813:9-24; 814:19-816:5; 818:22-819:11; 1092:2-20). Throughout
 5 the remainder of the Fall 2017 semester and early Spring 2018 semester, Student
 6 was absent from school approximately 30 times and received numerous warnings
 7 of truancy and tardiness from the District. (AR-338-342; AR-517). A.P. failed to
 8 attend several final exams, and her grades declined in nearly all subjects. (AR-396;
 9 1243:21-1244:6; 1245:22-146:11; 1247:9-19; 1263:20-1264:18). District was
 10 aware of A.P.'s attendance issues, as A.P.'s counselor characterized as not waking
 11 in time for school or not wanting to go to school because of stress or illness. (AR-
 12 1198:19-1199:23). Still, District did not propose to assess Student for special
 13 education eligibility.

14 By the 2017-2018 winter recess, A.P.'s anxiety and depression had
 15 worsened. She reported being unhappy with her performance at school, and felt she
 16 had no friends or support group. Student isolated herself in her room for most of
 17 the day, skipped meals, did not engage in self-care or basic hygiene, and expressed
 18 hopelessness. (AR-819:16-820:20; 821:15-25; 1096:4-10).

19 On January 1, 2018, Student's depression and emotional state deteriorated to
 20 the point that she attempted suicide by cutting both her wrists. (AR-821:12-822:23;
 21 1096:11-23). Student was then placed on a 72-hour psychiatric hold. (AR-822:25-
 22 823:9; 1096:24-1097:11). Upon her release on January 5, 2018, Student was
 23 provided with medical wrap-around services in the home to monitor her mental
 24 health. (AR-1133:19-1134:1). It was not until Parents notified the District of A.P.'s
 25 suicide attempt and subsequent hospitalization that District first offered to assess
 26 Student for special education. (AR-514; 823:10-824:2; 825:11-826:18).

27 District issued Parents a special education assessment plan on January 10,
 28 2018. The assessment plan proposed assessment in the areas of academic

1 achievement, health, intellectual development, social/emotional functioning, and
2 educationally related intensive counseling service needs. The assessment plan did
3 not propose to assess Student in the area of post-secondary transition. Parents
4 signed the assessment plan on January 10, 2018. (AR-514; 825:11-826:24).

5 Meanwhile, at the recommendation of District, Student withdrew from her
6 high school placement and enrolled in a District independent study program. (AR-
7 516, 520-525; 824:3-20). Student continued to suffer from anxiety and engaged in
8 school refusal. Student completed only three assignments in independent study,
9 and was warned of her non-compliance with academic work. (AR-343, 344; 830:4-
10 831:22; 833:10-834:24).

11 In light of District's inaction and Student's recent attempt on her life, and
12 facing a second consecutive year of academic and social-emotional decline in
13 2018, Parents, in desperation, sought out a suitable educational placement to
14 address her needs. On March 23, 2018, Parents provided written notice to the
15 District of their intention to unilaterally place student at Bridges Academy, a
16 private school tailored to serving gifted students with social emotional deficits and
17 learning differences. (AR-346; 1025:25-1026:16; 1109:4-13.)

18 District convened A.P.'s IEP meeting on April 27, 2018. (AR-588). District
19 found student eligible for special education under the eligibility category of
20 emotional disturbance. (AR-581-582; 605). For placement, District devised two
21 different offers. The first offer proposed that Student continue in the District's
22 independent study program. The second was for placement in an unspecified non-
23 public school ("NPS") certified with the state to provide special education
24 supports. (AR-605-606; 847:23-848:23; 848:18-851:2). A District coordinator with
25 limited knowledge of Student, who entered the IEP meeting over two hours after it
26 started, ultimately identified two non-public schools. (AR-606; 851:25-852:12;
27 1395:2-10; 1396:18-1397:19). Representatives from the two schools were not
28 invited to the IEP meeting, and the District did not explain the essential elements

1 of the programs, nor why the District believed they were appropriate for A.P. (AR-
2 857:3-13). The resulting IEP document did not name a specific school in the offer
3 of FAPE. (AR-600-603; 605-606; 850:18-851:2; 1419:13-21; 1792:22-1794:5;
4 1796:21-23).

5 Parents subsequently toured the two NPS placements discussed at the April
6 2018 IEP. After visiting both schools and speaking with their head administrators,
7 Parents determined that neither school was appropriate to meet A.P.'s unique
8 needs. (AR-853:7-854:8; 857:14-858:8; 858:19-25). Parents sent correspondence
9 dated May 14, 2018, notifying the District of the inappropriateness of the schools,
10 and their intention to keep Student at Bridges Academy. (AR-392). In the same
11 correspondence, Parents provided their consent to special education eligibility.
12 (*Id.*) *District did not respond to Parents' letter and did not offer an additional IEP*
13 *meeting to discuss placement.* (AR-862:10-13; 1790:11-1792:17; 1417:12-1418:6).
14 District issued correspondence on July 23, 2018, after the conclusion of the school
15 year, in response to a subsequent Parent letter dated June 19, 2018, but still did not
16 issue an IEP invite. (AR-613-616; 620).

17 Student's enrollment at Bridges Academy in April 2018 was characterized
18 by success and gains in both academic and emotional domains. Student primarily
19 received "A" and "B" grades, and earned credits from all classes taken. Student
20 consistently attended school, and established meaningful relationships with peers
21 and staff. Student's anxiety and depression, while still present, abated to a
22 manageable degree and did not impede her access to school. (AR-397-409; 862:14-
23 863:4; 863:20-864:10; 865:15-866:6; 873:10-25; 1041:2-8; 1066:11-1067:3;
24 1109:14-1110:7; 1115:1-21).

25 On November 27, 2018, A.P. by and through her Parents filed a request for
26 an administrative due process hearing against District alleging violations of the
27 IDEA in regards to District's failure to adequately identify student as a child with a
28 disability, failure to adequately assess student, failure to offer appropriate

1 placement and services at the April 2018 IEP, and procedural violations stemming
 2 from the April 2018 IEP. (AR-1-36). An administrative hearing was conducted
 3 across five days in April 2019, and resulted in a June 17, 2019 decision finding for
 4 District on all issues. (AR 650-722).

5 Plaintiffs' appeal of the June 17, 2019 decision was filed on September 13,
 6 2019, requesting partial reversal of the administrative decision.

7 **III. LEGAL ARGUMENT**

8 The standard of review of IDEA administrative proceedings is as follows:
 9 the Court "(i) shall receive the records of the administrative proceedings; (ii) shall
 10 hear additional evidence at the request of a party; and (iii) basing its decision on
 11 the preponderance of the evidence, shall grant such relief as the court determines is
 12 appropriate." 20 U.S.C. § 1415(i)(2)(C); *Ojai Unified School Dist. v. Jackson*, 4
 13 F.3d 1467, 1471-72 (9th Cir. 1993). While the reviewing district court has
 14 discretion to give "due weight" to the administrative findings, the weight given is
 15 impacted by whether the administrative findings are "thorough and careful" as to
 16 demonstrate "sensitivity to the complexity of the issues." *Capistrano Unified Sch.*
 17 *Dist. v. Wartenberg*, 59 F. 3d 884, 891 (9th Cir. 1995). Thus, the district court
 18 conducts a "modified de novo" review of the administrative decision, while
 19 questions of law are reviewed de novo. *Katherine G. ex rel Cynthia G. v. Kentfield*
 20 *Sch. Dist.*, 261 F. Supp. 2d. 1159, 1167 (N.D. Cal. 2003); *Amanda J. ex rel.*
 21 *Annette J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887-89 (9th Cir. 2001).

22 **A. THE DISTRICT FAILED TO ASSESS STUDENT IN VIOLATION OF** 23 **ITS CHILD FIND OBLIGATIONS, THEREBY DENYING STUDENT** 24 **NECESSARY SPECIAL EDUCATION SUPPORTS AND SERVICES.**

25 Under the IDEA's "child find" provisions, all state and local educational
 26 agencies have an affirmative obligation to actively and systematically seek out,
 27 identify, locate, and evaluate all children with disabilities, including those
 28 attending private schools, regardless of the severity of the disability. *See* 20 U.S.C.

1 § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1)(i). The child find obligation extends to
 2 every child suspected of having a disability and in need of special education, even
 3 if the child is advancing from grade to grade. 34 C.F.R. § 300.111(c).

4 The child find duty is triggered when there is knowledge of, or reason to
 5 suspect a disability, and reason to suspect that special education services may be
 6 needed to address the disability. *Cari Rae*, 158 F.Supp.2d at 1194. The threshold
 7 for suspecting that a child has a disability is low, and is based on whether the child
 8 should be referred for assessment, not whether the child actually qualifies for
 9 services. *Id.* at 1195. If a school district is on notice that a student exhibits
 10 symptoms of a disability covered by the IDEA, it must assess the student for
 11 special education eligibility, and cannot abrogate its responsibility via informal
 12 observation or the subjective opinion of staff. *Timothy O. v. Paso Robles Unified*
 13 *School Dist.*, 822 F.3d 1105, 1121 (9th Cir. 2016). Evaluating whether the District
 14 knew, or had reason to suspect, a disability is based on in the information District
 15 actually knew or had reason to know, at the relevant time. *Adams v. State of*
 16 *Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

17 Though a student may qualify for both special education and 504
 18 accommodations, the District cannot choose a preferred statute to follow, or take a
 19 “wait and see” approach before assessing for IDEA eligibility. *Simmons v.*
 20 *Pittsburgh Unified School District*, 2014 WL 2738214 at *15-16 (N.D. Cal. June
 21 11, 2014). The IDEA provides substantive and procedural protections that Section
 22 504 of Rehabilitation Act of 1973 does not offer, including the right to an IEP that
 23 meets the unique needs of a child. *Smith v. Robinson*, 468 U.S. 992, 1018 (1984).

24 Violation of the child find obligation is a procedural violation of the IDEA.
 25 *Cari Rae, supra*, 158 F.Supp.2d at 1194. A procedural violation constitutes a
 26 denial of FAPE if it results in the loss of educational opportunity to student,
 27 significantly impedes parent’s opportunity to participate in the IEP process, or
 28 causes deprivation of education benefits to student. 20 U.S.C. § 1415(f)(3)(E)(ii);

1 *W.G., et al. v. Board of Trustees of Target Range School Dist.*, 960 F.2d 1479,
2 1484 (9th Cir. 1992).

3 1. Evidence Presented at the Administrative Due Process Hearing
4 Established that District Failed to Assess Student Despite Actual
5 Knowledge of Her Disability.

6 District had reason to suspect that A.P. had a disability impacting
7 educational performance at several junctures in fall and winter 2017. First, at the
8 time of her enrollment in August 2017, Parents shared Student's educational
9 history, including her social emotional challenges. (AR-697, ¶13; 1177:24-
10 1179:14). District, aware of Student's history and needs, opted for a 504 meeting.
11 (AR-1179:8-14). Parents notified District, prior to the 504 meeting, that they
12 would invite A.P.'s treating psychologist, and clinical psychologist that performed
13 a psycho-educational assessment of A.P. in summer 2017, to the meeting. (AR-
14 1181:2-12). Thus, at or near the time of enrollment, District was aware that A.P.
15 had social emotional challenges, had attended several private schools prior to
16 arriving at the District, and that A.P. had a treating psychologist and psychological
17 evaluation. District's proposal for a 504 plan meeting evidenced its suspicion that
18 A.P. had a disability that impeded her access to learning. (AR-1184:24-1185:9
19 [District testimony that purpose of a 504 plan is to notify teachers how a child's
20 condition "hinders or—or impedes a child's progress and performance when in the
21 classroom"]).

22 At the subsequent 504 plan meeting on September 19, 2017, District
23 received actual knowledge that A.P. was a child with disabilities. During the
24 meeting, Parents shared that A.P. suffered from anxiety, major depressive disorder,
25 and learning disorders. (AR-802:7-21). A clinical psychologist that assessed A.P.
26 earlier that summer reported on her assessment findings and provided copies of her
27 psycho-educational evaluation to the District at the meeting. (AR-296-331; 332;
28 804:7-18; 809:21-810:14; 931:12-22; 1182:3-9). This report outlined A.P.'s recent

1 history of school refusal caused by anxiety and stress. (AR- 301, 317). A.P.'s
2 treating psychologist provided further feedback regarding A.P.'s educational
3 needs. (AR-1088:4-11; 1089:23-25). No District assessment was conducted prior
4 to the 504 meeting to determine A.P.'s needs. (AR-1203:22-1204:7).

5 A 504 document was created by District, documenting discussion of A.P.'s
6 disabilities at the 504 meeting. (AR-332-337). The 504 document noted the private
7 psycho-educational assessment findings, including diagnoses of nonverbal learning
8 disability, social anxiety, difficulty expressing learned concepts, a lack of fluid
9 reasoning in relation to complex problem solving, and specific learning disorder.
10 (AR-332). The 504 document also noted that A.P. had "depression triggered by
11 onset of anxiety and stress due to overwhelming workload or pressure." (AR-333).
12 Further, the document specifically identified A.P.'s nonverbal learning disability
13 and social anxiety disorder as a "potentially limiting mental or physical disability"
14 causing avoidance of school attendance and academic assignments, and that her
15 conditions substantially limited a major life activity. (AR-334). The document
16 concluded A.P.'s "specific learning disability may result in high stress, inability to
17 manage and to engage in school work," and she required accommodations for
18 "[m]ajor depression...due to overwhelming stress or anxiety." (AR-334, 337).

19 Thus, District received direct information at the September 19, 2017 meeting
20 from Parents and A.P.'s psychological team that she was a student with disabilities,
21 and clearly documented this information in its own 504 documentation. Despite
22 actual knowledge of A.P.'s disability, District did not offer to evaluate Student for
23 special education. (AR-802:22-803:3; 810:9-14).

24 Consistent with her reported disabilities as noted in District's 504
25 documentation, A.P. continued to experienced and exhibited signs of significant
26 anxiety and school refusal in the months following the 504 meeting, including
27 behaviors such as refusing to leave her room, refusing medication, refusing to eat,
28 skin picking, poor hygiene, and school refusal. (AR-801:15-802:6; 811:24-812:5;

1 813:9-16; 818:22-819:6; 1092:2-20). Throughout the remainder of the fall semester
 2 and early spring semester, Student was absent from school on thirty occasions.
 3 (AR-517 [Student attendance record showing thirty total excused and unexcused
 4 absences]). During this time, Parents received at least five notices of tardiness and
 5 truancy from the District. (AR-338-342). A.P. failed to participate in several final
 6 exams, and her grades in nearly all subjects fell from the beginning of the
 7 semester. (AR-396; 1243:21-1244:6; 1245:22-146:11; 1247:9-19; 1263:20-
 8 1264:18). A.P.'s disability was impeding her ability to attend school in fall 2017.
 9 Still, District did not offer to assess for special education. (AR-802:22-803:3).

10 District's failure to timely assess A.P. for special education at the time of
 11 enrollment and thereafter resulted in a denial of a FAPE under the IDEA. Had A.P.
 12 been assessed in fall 2017, she would have had the opportunity to receive needed
 13 supports and services to help her access learning. Without these supports, A.P.'s
 14 mental health declined, she refused school, and attempted suicide. (AR-821:12-
 15 822:23; 1096:11-23). District first found A.P. eligible for special education on
 16 April 27, 2018. (AR-588-612). By then, she was unsuccessful at two different
 17 placements within the District. (AR-343, 344, 516, 520-525; 824:3-20, 830:4-
 18 831:22; 833:10-834:24). District's failure to assess A.P. for special education
 19 impeded her ability to secure needed supports to successfully attend school, and
 20 denied Parents and A.P. participation in the IEP process in fall 2017.

21 2. The Administrative Findings Concerning Child Find Should Not Receive
 22 "Due Weight."

23 The administrative decision was not "thorough and careful" as to
 24 demonstrate "sensitivity to the complexity of the issues" in regards to the District's
 25 child find obligation. *Capistrano Unified*, 59 F.3d at 891. The administrative
 26 decision found that "Pasadena had no reason to assess Student for special
 27 education at the time of the Section 504 meeting" because of Student's "excelling
 28 grades and attendance," and because "diagnoses by a clinical psychologist based

on Diagnostic Manual criteria are not determinative of whether a Student is eligible for special education.” (AR-697, ¶ 14). The administrative law judge’s (“ALJ’s”) analysis flatly omits highly relevant testimony from Parent, A.P.’s psychological team, and District regarding the information shared at the 504 meeting (AR-296-331; 332; 802:7-21; 804:7-18; 809:21-810:14; 931:12-22; 1088:4-11; 1089:23-25; 1185:10-22), and ignores documentary evidence revealing the District’s actual knowledge of Student’s disabilities and corresponding impairments impacting her educational performance. (AR-296-331; 332-337).

Further, the ALJ’s reliance on grades, attendance, and clinical diagnoses is misplaced and contradicted by law cited in her decision. The bar for child find is low, and is triggered when there is a *reason to suspect* a disability and potential need for services. *Cari Rae*, 158 F.Supp.2d at 1194-95. Courts in this circuit have held that “[i]nformed suspicions of parents, who may have consulted outside experts,” “informed suspicions of outside experts,” and absences have all been considered as triggers for District’s duty to assess. *See Timothy O.*, *supra*, 822 F.3d at 1120 (citing *Pasatiempo v. Aizawa*, 103 F.3d 796, 802 (9th Cir. 1996) and *N.B. v. Hellgate Elementary School District*, 541 F.3d 1202 (9th Cir. 2008)); *Cari Rae*, *supra*, 158 F. Supp. 2d at 1195.

The above elements were all present in this case. Parents consulted with outside experts, shared their informed suspicions, and had their private experts affirmatively share findings with the District at the 504 meeting. While A.P.’s grades and attendance were initially satisfactory mere weeks into the school year, they declined for the very reasons outlined in the 504 documentation and private evaluation. (AR-301, 317, 332-334, 337; 396; 517; 1243:21-1244:6; 1245:22-146:11; 1247:9-19; 1263:20-1264:18). The decision cites no authority dictating grades and attendance as more determinative than the above factors; in fact, this circuit has held that it is not the District’s suspicion alone that activates procedural protections of the IDEA. *Pasatiempo*, 103 F.3d at 801-02.

Moreover, the decision relies on non-binding and somewhat inapplicable guidance from the Office of Special Education Programs (“OSEP”) to assert that a diagnosis pursuant to the Diagnostic Manual is “not synonymous with eligibility under the IDEA,” and thus District had no reason to assess in light of the findings in the summer 2017 private evaluation. The OSEP letter is not related to child find analysis, and the decision omits authority providing that clinical diagnoses cannot be considered in this analysis. To the contrary, the authority cited above provides that input from outside experts triggers the duty to assess. *Timothy O.*, 822 F.3d at 1120. The decision thus places non-binding OSEP guidance unrelated to child find ahead of binding authority from this circuit.

The decision improperly dismissed A.P.’s attendance and grade declines following the 504 meeting and concluded the District was somehow unaware that they were related to A.P.’s disabilities. (AR-698, ¶¶ 15-18). The ALJ again ignored the District’s 504 document and psycho-educational report that explicitly referenced A.P.’s struggles with school refusal and work avoidance due to depression and anxiety. (AR-301, 317, 332-337). The ALJ also failed to consider testimony from A.P.’s psychologist, Parent, and District counselor that revealed discussion at the 504 meeting of A.P.’s struggles with anxiety and depression, and resulting issues with attendance and school refusal. (AR-802:7-21; 804:7-18; 809:21-810:14; 931:12-22; 1088:4-11; 1089:23-25; 1185:10-22). The ALJ noted that A.P.’s teachers did not report negative changes in behavior, but failed to cite A.P.’s absences during final exams, the thirty total absences in fall 2017, or that District’s counselor knew A.P.’s absences were related to stress and school avoidance. (AR-338-342; 396; 517; 1198:19-1199:23; 1243:21-1244:6; 1245:22-146:11; 1247:9-19; 1263:20-1264:18). The ALJ claimed District did not have reason to suspect A.P.’s attendance issues stemmed from her social emotional state, but Parent testified that she notified the school of absences, and that A.P.’s treating psychologist contacted District to explain the absences were linked to her

1 mental health challenges. (AR-815:4-11; 821:5-11) This evidence establishes
 2 District was aware of the nexus between A.P.'s school refusal and her disabilities.

3 The ALJ found that District "was entitled to wait for a reasonable period"
 4 after the 504 meeting to see if the 504 accommodations worked. (AR-698, ¶ 17).
 5 The decision cites to California Education Code section 56303 (AR-697, ¶ 12),
 6 providing that resources of the regular education program must be considered prior
 7 to referral to special education. Reliance on section 56303 is misplaced in this case.
 8 This provision does not apply to assessment, nor does it suspend District's duty to
 9 assess when considering regular education for a student. Even if section 56303 did
 10 apply, the IDEA takes precedent, and thus the child find duty cannot be excused.
 11 *See Hacienda La Puente Sch. Dist. of Los Angeles v. Honig*, 876 F.2d 487, 495
 12 (9th Cir. 1992); *RB ex rel. Parent v. Mastery Charter School*, 762 F.Supp.2d 745,
 13 762 (E.D. Pa. 2010). The ALJ ignored authority that the District cannot delay
 14 assessment by offering accommodations in the regular education setting, and that
 15 such approach denies meaningful participation in the IEP process. *Simmons*, 2014
 16 WL 2738214 at *15-16. The ALJ also ignored evidence demonstrating A.P.'s
 17 performance and attendance declined despite 504 accommodations, and that she
 18 required more intensive support to access learning. (AR-317-319, 332-334, 337;
 19 338-342; 396; 517; 1243:21-1244:6; 1245:22-146:11; 1247:9-19; 1263:20-
 20 1264:18).

21 **B. THE DISTRICT FAILED TO CONDUCT A POST-SECONDARY**
 22 **TRANSITION ASSESSMENT, AND FAILED TO OFFER**
 23 **APPROPRIATE POST-SECONDARY TRANSITION SERVICES.**

24 IDEA and California law require that by the time a child with a disability
 25 reaches the age of 16, the school district must have an IEP in effect that includes
 26 "appropriate measurable postsecondary goals based upon age appropriate transition
 27 assessments related to training, education, employment, and where appropriate,
 28 independent living skills." 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb); 34 C.F.R.

§ 300.320(b)(1)-(2); Cal. Ed. Code § 56345(a)(8). This provision was added to the 2004 reauthorization and revision of the IDEA, specifically to address Congressional findings that “providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.” 20 U.S.C. § 1400(c)(14).

An IEP must contain the transition services needed to assist the pupil in reaching post-secondary goals. 34 C.F.R. § 300.320(b); Cal. Ed. Code, § 56345(a)(8)(A). Federal regulations highlight the importance of transition planning and services being “designed to be *within a results-oriented process*, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities.” 34 C.F.R. § 300.43(a)(1) [emphasis added].

1. The District Did Not Conduct an Age-Appropriate Transition Assessment.

Here, it is undisputed that “no informal age-appropriate transition assessment” was conducted. (AR-709, ¶ 68). A.P. turned 16 prior to the April 2018 IEP, but District’s assessment plan signed by Parents did not include a transition assessment, and witnesses confirmed the absence of formal assessment. (AR-513-514; 869:17-870:5; 1413:25-1415:10). Though the transition plan in the April 2018 IEP indicated that a brief interview of Student was conducted, the decision accurately found “there was likely no informal age-appropriate transition assessment.” (AR-709, ¶ 68). Even if there was a brief interview of Student, this would have been insufficient. *S.G.W., et al. v. Eugene School Dist.*, Case No. 6:16-cv-01612-AA at *13 (D. Or. 2017) (citing *Forest Grove Sch. Dist. v. Student*, 2014 WL 2592654, at *29 (D. Or. 2014)).

2. The Lack of Assessment and District’s Transition Plan in the IEP Resulted in Educational Harm.

The ALJ incorrectly found that the lack of transition assessment was a “harmless procedural violation.” (AR-711, ¶ 75). Case law in this circuit has

1 established that lack of transition assessment necessarily results in educational
 2 harm because it denies participation in the IEP process. In *Carrie I. ex rel. Greg I.*
 3 *v. Dep't of Educ., Hawaii*, 869 F.Supp.2d 1225 (D. Haw. 2012), the court affirmed
 4 an administrative finding of educational harm due to lack of transition services, in
 5 large part due to the lack of transition assessment. There was no dispute that a
 6 transition assessment did not occur, and the court held that “[t]he lack of
 7 assessments alone is enough to constitute a lost educational opportunity.” *Carrie I.*,
 8 869 F.Supp.2d at 1247. Citing *L.M. v. Capistrano Unified School Dist.*, 556 F.3d
 9 900, 909 (9th Cir. 2009), the court held that even if there was no lost educational
 10 opportunity, the lack of transition assessment denied student of “any opportunity to
 11 participate” in the IEP process. *Id.*

12 Here, without transition assessment, A.P. and her parents were denied the
 13 opportunity to participate in the development of her IEP and transition supports.
 14 Neither Parents nor A.P. were consulted in the preparation of the transition plan
 15 and services, and Parents were not aware of the information District used to
 16 complete the plan. (AR- AR-709, ¶ 68; 848:16-21; 869:21-870:8).

17 The lack of transition assessment also results in educational harm if the
 18 transition supports offered are inadequate. In *S.G.W.*, *supra*, the district court
 19 affirmed the ALJ’s findings of inadequate transition plan and services. The
 20 transition goals, while measureable, “were not based on age appropriate transition
 21 assessments.” *S.G.W.*, 6:16-cv-01612-AA at *12. Further, while the IEP offered
 22 transitions classes, participation in a career day, and a visit to a local community
 23 college, such offerings were insufficient because they were “not individualized to
 24 meet student’s needs.” *Id.* The court opined on the difficulty of showing
 25 educational harm when disputing transition services, noting that it’s appropriate to
 26 rely on “the extent to which the transition services were individually tailored to
 27 meet student’s needs.” *Id.* at *14. Other factors relevant in determining the
 28 inadequacy of transition supports include whether the IEP has, “a generic and

1 somewhat vague formula of post-high school goals and services, equally applicable
 2 to almost any high school student,” and the failure to consult student and parents in
 3 preparation of the plan. *See Virginia S. v. Dept. of Educ.*, 2007 U.S. Dist. Lexis
 4 1518 at *24-25 (D. Hawaii, Jan. 8, 2007).

5 District’s offered transition plan and services in the April 2018 IEP were
 6 similarly deficient. The IEP was not based on an age-appropriate transition
 7 assessment, and thus the goals and services therein were not based on evaluation of
 8 A.P.’s post-secondary needs, interests, or strengths. Further, neither Parents nor
 9 A.P. were consulted in preparation of the plan, and District testified that its
 10 transition plans are generated without assessment. (AR-1414:6-12). The IEP
 11 contains a generic employment goal to “work on a resume” and discuss career
 12 opportunities, while the transition plan contains generic, unmeasurable goals that
 13 merely provide that A.P. will “work towards becoming an actress.” (AR-598, 607).
 14 No independent living goal was offered despite A.P.’s noted deficits in daily living
 15 skills.⁴ (AR-607; 801:11-802:6; 1092:2-20). The “activities” and “community
 16 experiences” offered in the plan are not individualized to A.P. and could apply to
 17 any student (e.g. “identify skills and talents,” “meet with Counselor for academic
 18 counseling,” “attend field trips to local community colleges”). (AR-607). Notably,
 19 the goals and activities fail to take into account A.P.’s unique struggles with
 20 independent task initiation and completion, self-advocacy, and especially her major
 21 depression and anxiety resulting in school refusal. (AR-317, 318; 551, 579, 580;
 22 807:16-23; 815:12-816:5; 1092:2-20). Though the IEP offers generic services listed
 23 as “Career Awareness” and “Vocational assessment, counseling, guidance, and
 24 career assessment,” they are limited to just one hour yearly and the IEP does not
 25

26 ⁴ The ALJ improperly dismissed A.P.’s deficits in living skills as only occurring
 27 “during bouts of serious depression or anxiety.” (AR-710, ¶ 70). These deficits
 28 were seen before and after the “bouts of serious depression” that lead to her
 attempted suicide. (AR-801:11-802:6; 1092:2-20; 1115:1-10; 1115:25-1117:7).

1 describe the service components. (AR-600). These services were not discussed at
 2 the IEP, and District's testimony that transition supports are generated without
 3 assessment further evidences their generic nature. (AR-848:16-21; 869:21-870:8;
 4 1414:6-12).

5 District's failure to conduct a transition assessment resulted in a deficient
 6 transition plan that was not individualized to A.P.'s needs or interests. Without
 7 assessment, Parents could not meaningfully participate in the determination of her
 8 post-secondary transition supports, and A.P. suffered educational harm by being
 9 presented with a plan not individualized to her needs.

10 3. The Administrative Findings Concerning Transition Supports Should Not 11 Receive "Due Weight."

12 The administrative decision contains several glaring flaws in its transition
 13 analysis. The ALJ cited to *M.M. v. New York City Dept. of Ed.*, 655 Fed.Appx. 868
 14 (2d Cir. 2016) for support, but reliance on this authority is misguided. The citation
 15 to *M.M.* is to a summary order from the Second Circuit, and the order clearly states
 16 it does not have precedential effect. *M.M.*, 655 Fed.Appx. 868 (Case No. 15-1200).
 17 Further, the brief order contains no analysis on the issue of transition assessment.
 18 *Id.* The underlying district court decision in *M.M.* is inapposite. *M.M. v. New York*
 19 *City Dept. of Ed.*, Case No. 1:14-cv-01542-GBD (S.D.N.Y. Mar. 18, 2015). There,
 20 student's principal argument was whether the lack of transition assessment denied
 21 parents sufficient information to make an informed decision regarding district's
 22 placement offer. *Id.* at *11. The district court found the IEP team had sufficient
 23 information about student's transition needs to develop his IEP, citing testimony of
 24 an IEP coordinator demonstrating that the offered placement could address all of
 25 student's transition goals. *Id.* at *12. Here, A.P. does not assert the lack of
 26 transition assessment prevented consideration of the placement offer, but that she
 27 was denied educational benefit and participation in the IEP process.
 28

1 The ALJ relies heavily on *Virginia S., supra*, and *Lessard v. Wilton-*
 2 *Lyndeborough Coop. School Dist.*, 518 F.3d 18 (1st Cir. 2008), to assert that the
 3 IEP contained sufficient content to meet transition requirements. The ALJ's
 4 analysis of both cases is flawed. In *Virginia S.*, the transition plan at issue was
 5 procedurally deficient, but the court found no educational harm primarily because
 6 student was entering tenth grade, rather than eleventh or twelfth grade. *Virginia S.*,
 7 2007 U.S. Dist. Lexis 1518 at *24-26. Here, A.P. was entering eleventh grade
 8 shortly after the IEP, making her transition plan highly relevant to her education.
 9 (AR-588).

10 The ALJ relied on *Lessard* to assert that “the test in evaluating a transition
 11 plan is whether the IEP, taken in its entirety, was reasonably calculated to
 12 enable...educational benefits.” (AR-710, ¶ 74). However, *Lessard* analyzed
 13 transition requirements prior to the 2004 reauthorization of the IDEA, when the
 14 law did not require transition assessments or measurable postsecondary goals.
 15 *Lessard*, 518 F.3d at 21; *Carrie I.*, 869 F.Supp.2d at 1244, fn.9. Assuming
 16 *arguendo* that *Lessard* applied, A.P.'s IEP, if examined in its entirety, does not
 17 remotely contain the “wide array of other transition services” found in *Lessard* that
 18 made the IEP appropriate, including “six hours of pre-vocational training each
 19 week and regular instruction in specific transition-related skills.” *Lessard*, 518 F.3d
 20 at 30. Moreover, even if the IEP contained goals or supports that addressed A.P.'s
 21 overall goals or needs, the District cannot escape “its statutory obligation to
 22 provide appropriate, measureable goals developed according to timely transition
 23 assessments.” *Dracut Sch. Comm. V. Bureau of Special Educ. Appeals of Mass.*
 24 *Dep't of Elem. & Secondary Educ.*, 737 F.Supp.2d 35, 51 (D. Mass. 2010).

25 Lastly, the ALJ improperly dismissed A.P.'s contention that a representative
 26 from the placements offered should have been invited to the IEP. (AR- 710, ¶73).
 27 The law is clear that “to the extent appropriate, with the consent of the parents or a
 28 child who has reached the age of majority...the public agency must invite a

representative of any participating agency that is likely to be responsible for providing or paying for transition services.” 34 C.F.R. § 300.321(b)(3). The IEP listed “Nonpublic school (NPS)” as the provider for the transition services. (AR-600). Thus, an NPS representative should have been present as a necessary source of information for the team.

C. DISTRICT FAILED TO MAKE A SPECIFIC OFFER OF PLACEMENT, THEREBY PROCEDURALLY DENYING STUDENT A FAPE.

An important aspect of the parents’ right to participate in the IEP process is the district’s obligation to make a formal, written offer which clearly identifies the proposed program. *Union Sch. Dist. v. Smith* 15 F.3d 1519, 1526 (9th Cir. 1994). The requirement of a formal, written offer alerts the parents to the need to consider seriously whether the offered placement was an appropriate placement under the IDEA so that the parents can decide whether to oppose the offered placement or to accept it with the supplement of additional education services. *Glendale Unified School Dist. v. Almasi*, 122 F.Supp.2d 1093, 1107 (C.D. Cal. 2000) (citing *Union*, 15 F.3d at 1526). A formal written offer is more than a mere technicality, and is vigorously enforced. *Union*, 15 F.3d at 1526.

1. District’s Offer of Two Distinct School Placements Precluded Meaningful Participation and Informed Consent to the IEP.

In *Glendale*, the District offered student multiple placement options at the IEP, “each of which included participation in a distinct program.” *Glendale*, 122 F.Supp.2d at 1107. The court held that “a school district cannot abdicate its responsibility to make a specific offer allowing a parent to choose from among several programs presented as formal offers.” The court noted that “[a]fter discussing the advantages and disadvantages of various programs that might serve the needs of a particular child, the *school district must take the final step* and clearly identify an appropriate placement from the range of possibilities.” *Id.* at

1 1108, (emphasis added). In applying *Union*, the court further held that “offering a
 2 variety of placements puts an undue burden on a parent to eliminate potentially
 3 inappropriate placements, and makes it more difficult for a parent to decide
 4 whether to accept or challenge the school district’s offer.” *Id.* Accordingly, *Union*
 5 “require[s] that the District formally offer a single, specific program.” *Id.* at 1107.

6 Similarly, in *A.K. ex rel. J.K. v. Alexandria City School Board*, 484 F.3d
 7 672, 681 (4th Cir. 2007), the court held “as a matter of law that because [the
 8 district] failed to identify a particular school, the IEP was not reasonably calculated
 9 to enable [the student] to receive educational benefits.” In that case, the IEP
 10 recommended a private day school, but did not specify the specific schools being
 11 considered. *Id.* The court reasoned that without a specific school named, “the
 12 parents were left to fend for themselves to determine whether any private day
 13 school in their area ... would be a satisfactory fit.” *Id.*

14 Even when the NPS level of instruction is appropriate for student, an offer
 15 with multiple NPS placements is procedurally deficient because it deprives parents
 16 of informed consent. *Parents on Behalf of Student v. Poway Unified School*
 17 *District*, (OAH CA 2018) OAH No. 2018060763, 2018080048 at pp. 25, 28, 44.
 18 Factors relevant to showing a denial of FAPE include: omission of specific
 19 information regarding the specific classroom placement, the teacher or type of
 20 curriculum provided, or the contents of the program; district’s failure to invite a
 21 representative from the NPS placements to the IEP to present information and
 22 answer questions; speaking in “generalities as to what the nonpublic schools
 23 provided”; and failing to provide more comprehensive information to Parents
 24 following the IEP. *Id.* at 44-45.

25 Here, A.P. was presented with an unclear offer of placement at the April
 26 2018 IEP. As in *Glendale*, *A.K.*, and *Poway*, the District offered multiple
 27 placements. After Parents voiced their concern with the independent study
 28 placement offer, the District made a second offer of placement at an unspecified

1 NPS. (AR-603, 605). At this point, more than two hours into the meeting, and after
2 considerable discussion of A.P.'s needs, the District brought in a new District team
3 member to discuss the offer. (AR-606; 1395:2-10; 1396:18-1397:19.) The team
4 member discussed two distinct NPS placements: Hillside Learning Center and
5 STEM-3 Academy. (AR-606). The resulting IEP document did not identify a
6 specific school offer, but instead listed "Nonpublic day school" as the placement
7 offered. (AR-603, 606). Parents were not clear which NPS placement the District
8 was offering, and the IEP team did not identify a specific NPS for Parents to
9 accept, even as of July 2018. (AR-850:18-851:2; 857:3-13; 1419:13-21).

10 District's offer of generic NPS placement, with discussion of two different
11 schools, was a denial of FAPE. Similar to *Poway*, the District here did not invite
12 NPS representatives to the IEP meeting. (AR-611). Moreover, the District did not
13 provide vital information about the placements, including the specific classroom
14 where A.P. would be placed, the teacher or type of curriculum to be provided, or
15 the contents of the specific program at either school. (AR-857:3-13; 1366:7-14).
16 Only generalities of the two schools were shared, and no one at the IEP meeting
17 was able to express how the schools could be a FAPE for A.P. (*Id.*) Subsequent to
18 the IEP meeting, Parents visited Hillside and STEM-3, notified District of their
19 concerns with the placements, but District did not convene another IEP meeting.
20 (AR-392; 858:19-859:8; 862:1-12; 1790:11-1791:24; 1792:2-17).

21 In sum, the District did not take the final step in offering a specific NPS, and
22 Parents were left to fend for themselves to determine whether Hillside or STEM-3
23 were appropriate for A.P. The District's failure to offer a specific NPS placement
24 placed an undue burden on Parents to eliminate inappropriate placements, and the
25 District's failure to provide specific details about the schools and their ability to
26 meet A.P.'s needs precluded Parents' ability to provide informed consent.

27 The ALJ improperly relied on *Rachel H. v. Dept. of Ed., State of Hawaii*,
28 868 F.3d 1085 (9th Cir. 2017) to conclude that identification of a particular school

was not required. (AR-711, ¶78). *Rachel H.* concerned whether the IDEA’s requirement that the location of services be noted in the IEP also required District to name the specific public school student would attend. The student had moved to a new city and was to attend a public school, but student contended that her last IEP placement offer of a generic “public school campus” deprived parents basic information concerning the FAPE offer. *Rachel H.*, 868 F.3d at 1087, 1092. In contrast, A.P. was offered NPS placement outside of the District, not a regular District public school. As District testified, NPS placements differ from school to school, and A.P. had unique needs associated with her disabilities that could not be served by just any NPS. (AR-1619:13-24; 1763:20-1764:7; 1765:9-20). Thus, the issue is whether failure to specify the NPS offered, and provide specifics as to that NPS, precluded meaningful participation and informed consent to the IEP.

As the *Rachel H.* court noted, “knowledge of a particular school, classroom, or teacher may well be relevant to allowing parents to participate meaningfully in the IEP process,” and may be required to allow Parents to “evaluate whether a proposed IEP satisfies the IDEA because of a particular special education need caused by a child’s disability.” *Id.* at 1092 (citing *A.K.*, *supra*, at 681). This is the case here. Generally discussing two NPS placements was not sufficient; Parents were not provided information about how the placements would meet A.P.’s unique needs, and ultimately were not provided with a specific school to evaluate. (AR-850:18-851:2; 857:3-13). As in *A.K.*, *supra*, Parents were left to fend for themselves to determine the appropriateness of the two schools discussed.

2. The Administrative Findings Concerning Clarity of Offer Should Not Receive “Due Weight.”

The ALJ erroneously concluded, without any support, that there was no question about whether the two schools could implement the IEP. (AR-713 ¶83). This was very much in dispute on the issue of placement. (AR-392; 606; 857:3-13; 853:4-854:8; 857:14-858:25). Further, the decision improperly weighed the

1 testimony of the District IEP team member who discussed the two NPS placements
 2 at the IEP. The ALJ relied heavily on his testimony to conclude there was specific
 3 discussion of both schools and Parents meaningfully participated. (AR-713, § 83-
 4 84). The ALJ failed to properly consider that this member entered the IEP two
 5 hours late, admitted having limited knowledge of A.P., and that he testified to
 6 specifics of the schools only after visiting them a month prior to hearing. (AR-
 7 1395:2-10; 1396:18-1397:19; 1420:7-1421:25). His testimony did not establish
 8 specifics of the schools were discussed at the meeting, nor that he had sufficient
 9 knowledge of A.P.'s needs to make an informed offer.

10 The decision also gave undue weight to District testimony to conclude that
 11 District did not have to name a specific school. (AR-713, § 85). This testimony
 12 came from a District special education director that was not employed by the
 13 District at the time of the IEP, and did not participate in the meeting. (AR-1794:16-
 14 23; 1799:11-18). Further, the ALJ provided no legal justification that District could
 15 name multiple schools in its offer because Parents had to first visit the schools and
 16 seek enrollment. The ALJ places an undue burden on Parents to secure enrollment
 17 at an NPS offered by District. The District could have easily consulted with
 18 potential schools prior to and during the IEP to determine availability and fit.

19 **D. THE ADMINISTRATIVE DECISION SHOULD BE REVERSED,**
 20 **THUS ENTITLING STUDENT TO REIMBURSEMENT.**

21 A parent may be entitled to reimbursement for placing a student in a private
 22 placement, without the agreement of the local school district, if the parents prove
 23 that the district did not make a FAPE available to the student in a timely manner
 24 prior to placement, and the private placement was appropriate. 20 U.S.C. §
 25 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); *School Committee of Town of*
 26 *Burlington, Mass. v. Department of Educ.*, 471 U.S. 359, 369-70 (1985). In
 27 assessing the appropriateness of a unilateral placement, the totality of the
 28 circumstances must be considered in determining whether the placement

1 reasonably serves a child's individual needs. *Gagliardo v. Arlington Central*
 2 *School District*, 489 F.3d 105, 113-15 (2d. Cir. 2007). Parents may receive
 3 reimbursement for the unilateral placement if the placement met the child's unique
 4 needs and provided him or her with educational benefit. *Florence County School*
 5 *District Four v. Carter*, 510 U.S. 7, 13-14 (1993).

6 Here, the District denied A.P. a FAPE by failing to offer special education
 7 services prior to the April 27, 2018 IEP. A.P. was unilaterally placed at Bridges on
 8 or about April 9, 2018, and Parents provided appropriate notice on or about March
 9 23, 2018. (AR-346). The District did not make a FAPE available to A.P. prior to
 10 the unilateral placement. Bridges was also appropriate for A.P. and provided
 11 educational benefit. Grade reports following her enrollment show primarily A and
 12 B grades in nearly all subject areas, and that A.P. consistently produced work.
 13 (AR-397-409). She ceased engaging in school refusal due to her anxiety, was no
 14 longer depressed, and performed significantly better than when she was in the
 15 District. (AR-862:14-863:2; 1115:1-21). Moving her following the April IEP
 16 "would have been taking her home away." (AR-865:24-866:6).

17 In this case, overturning of the OAH decision and ordering the District to
 18 reimburse Student's private costs paid by Parents is the appropriate relief. Such
 19 relief includes non-reimbursed expenses for tuition at Bridges Academy and
 20 related transportation costs, psychological counseling services, and private post-
 21 secondary career transition services. The OAH decision is legally and factually in
 22 error and the preponderance of the evidence supports Plaintiffs' requests for relief.

23 Dated: October 15, 2020

24 Respectfully submitted,
 25 WOODSMALL LAW GROUP, PC

26 By: _____/s/
 27 Mark Woodsmall
 28 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Case Name: A.P., et al. v. Pasadena Unified School District

Case No.: 2:19-CV-07965-MWF (SSx)

On October 15, 2020, I filed the following document(s) described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** electronically through the CM/ECF system. All parties on the Notice of Electronic Filing to receive electronic notice have been served through the CM/ECF system.

The parties listed below are currently on the list to receive e-mail notices for this case.

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BY EMAIL: I have caused the above-mentioned document(s) to be electronically served on the above-mentioned person(s), who are currently on the list to receive e-mail notices for this case.

Executed on October 15, 2020, at Pasadena, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Justin Youngs
Justin Youngs