BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MT. DIABLO UNIFIED SCHOOL DISTRICT	OAH CASE NO. 2012110641

DECISION

Administrative Law Judge Deidre L. Johnson (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in Oakland, California, on March 5, 6, 7, and 18, 2013.

Attorney Natashe Washington represented Student and Parent (collectively referred to as Student). Attorney Hee Kim was also present for most of the hearing. Student was not present during the hearing.

Attorney Matthew Juhl-Darlington represented Mt. Diablo Unified School District (District). Carolyn Patton, Ph.D., the District's Administrator of Special Education Programs, was present during the hearing.

Student filed her complaint with OAH on November 20, 2012. On January 4, 2013, OAH granted the parties' joint motion for a continuance to the above hearing dates. At the hearing, oral and documentary evidence were received. On March 7, 2013, a continuance was granted until the hearing resumed on March 18, 2013. On March18, 2013, at the close of the evidentiary hearing, a continuance was granted to permit the parties to file written closing arguments. The record remained open until April 8, 2013, for the submission of written closing arguments. Student and District submitted closing

briefs, the record was closed on April 8, 2013, and the matter was submitted for decision.[1]

ISSUES[2]

1. Did District deny Student a free appropriate public education (FAPE) for the 2012-2013 school year by failing to timely conduct an individualized education program (IEP) team meeting after Parents requested an assessment in May 2012?

2. Did District deny Student a FAPE for the 2012-2013 school year by failing to timely conduct a IEP team meeting after Parents request for an IEP meeting on August 28, 2012?

3. Did District deny Student a FAPE for the 2012-2013 school year by failing to make a formal, specific written offer of a FAPE that identified the proposed program (placement and related services), and the start date, frequency, location, and duration of the program?[3]

---

[1] For the record, District's brief has been marked for identification as Exhibit D-14, and Student's brief has been marked as Exhibit S-37.

[2] The issues were reorganized, renumbered, and reworded in connection with the prehearing conference (PHC) on February 25, 2013. Here, Student's issues are further reorganized and reframed in the interests of clarity and consistency with the applicable law.

[3] Student omitted any mention of eligibility in the issues set forth in her complaint. However, during the hearing, Student asserted that her issues implied eligibility as a prerequisite to initial placement in the District. District stipulated that its IEP offer dated February 27, 2013 contains an offer of eligibility for special education,

PROCEDURAL MATTERS

MOTION TO AMEND COMPLAINT

At the outset of the hearing, Student made an oral motion to amend her complaint to add as a fourth issue whether District's 60-page IEP offer dated February 27, 2013, denied her a FAPE. Student argued that it appeared from District's prehearing disclosure of exhibits and witnesses that it intended to litigate the appropriateness of its February 2013 offer in this case and she therefore needed to add the offer's denial of FAPE to her case.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i); Ed. Code § 56502, subd. (e).) The filing of an amended complaint restarts the applicable timelines for the due process hearing unless the parties waive application of that requirement. (20 U.S.C. § 1415(c)(2)(E)(ii).)

Student's motion was made on the first day of hearing and was not timely. In addition, Student did not present a proposed amended complaint containing the new issue for District's consideration. Although District did not oppose the motion, Student's motion did not comply with the law because District's oral consent to add the issue did not resolve the requirement to have its consent in writing, combined with a continuance to restart all timelines, including a new resolution period.

Student's motion to amend was vague and confusing because District's lengthy IEP offer could be challenged for many reasons, not just one, including eligibility, annual

---

along with an offer of placement and services and Dr. Patton confirmed this in her testimony.

goals, present levels of performance, educational placement and related services. The ALJ offered Student a brief continuance to draft a proposed amended complaint to state the new issues with sufficient specificity. Even then, if permission to amend were given, all timelines would need to start over and a continuance granted. However, District opposed a continuance.

District asserted that it intended to present evidence of its February 2013 IEP offer in its defense, to show compliance with the law and/or mitigation. The ALJ ruled that litigation of a new issue, the appropriateness of its February 2013 offer, was not a relevant defense. The ALJ permitted District to present in its defense stipulations and/or evidence that an IEP team meeting was held on February 27, 2013, and that District made an offer of special education eligibility, placement and services. Since Student's issues in this case are solely related to District's failure to hold IEP team meetings and make an offer, the District's relevant defense would be made by such a showing.

Student thereafter withdrew the motion to amend her complaint. District then made a motion for the issue of the appropriateness of its February 2013 IEP offer to be added to the case and offered to limit the issue to District's offer of placement only. The motion was denied because District had no standing to add issues to Student's case. District had the right to file its own complaint and move for consolidation of the two cases but did not do so. Both parties thus declined a continuance so all issues could be heard in one hearing. Accordingly, no amendments or changes were made to Student's issues set forth above.

OBJECTION TO DISTRICT'S CLOSING BRIEF

On April 9, 2013, Student filed an objection to District's closing brief and moved to strike portions of its closing brief at page 19, paragraphs one through six. District argues in those paragraphs that Student did not prove District's offer of placement in its February 27, 2013 IEP was "inappropriate." On April 24, 2013, District belatedly filed a

reply. To the extent District may still seek to place the appropriateness of its offer at issue in this case, Student's objection is sustained in light of the above ruling made during the hearing that the substantive content of District's February 2013 offer is not at issue. However, Student's motion to strike those lines is denied. The context in which District's argument is made makes it clear it addresses Student's request for placement at a nonpublic, non-sectarian school (NPS) as a remedy and argues that this remedy should be denied. Therefore, the ALJ has considered District's argument as relevant to its defenses regarding requested remedies.

CONTENTIONS AND REQUESTED REMEDIES

Student contends that District's liability is clear because it has conceded that it did not timely hold an IEP team meeting or make a written offer of special education placement and services until the end of February 2013. In her complaint, Student requested orders from OAH for District to fund her prospective placement at an NPS with appropriate supports and services; compensatory education from a nonpublic agency (NPA) in the form of one-to-one intensive instruction in all core academic areas; and reimbursement to Parent for the costs of Student's placement at Concordia, a private school. In Student's closing argument, she continues to request prospective placement at an NPS, and asks for placement at an NPS as compensatory education, unspecified other compensatory education, and reimbursement for the costs of both Concordia and a private tutor.

District contends that Student is not entitled to relief because Parent re-enrolled Student at a private school in September 2012, did not express an interest in returning to the public school system until December 2012, and thereafter failed to attend several scheduled IEP team meetings. District argues that any violations of law it did commit do not entitle Student to either placement at an NPS or reimbursement for tuition paid to Concordia or the costs of a tutor. District also claims that Student's enrollment at

Concordia was not appropriate and she did not submit evidence of any appropriate NPS. District does concede that some compensatory reimbursement for Parent's costs may be appropriate.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTION

1. At the time of the hearing, Student was a nine-year old girl residing with her adoptive mother, Parent, within the jurisdictional boundaries of the District. District is Student's local educational agency (LEA) for purposes of special education.

2. At the age of three and a half years, Student began attending Concordia, a private Montessori school located in Concord, California. Parent first noticed Student's learning struggles in preschool. Student's pediatrician considered a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).

District's 2010 Assessment

3. In 2010, when Student was beginning first grade at Concordia, Parent requested a special education assessment from the District. District retained Sherry Burke, Ed.D., L.E.P., to conduct a psychoeducational assessment in August and September 2010.[4]

4. Dr. Burke issued a written report dated September 17, 2010, which included analysis of her formal test results, information from interviews with Parent and Student's teachers at Concordia and classroom observations. She found Student to have

[4] Dr. Burke has been a psychologist in the education field for about 29 years, first as a school psychologist and then as a licensed educational psychologist. She has conducted psychoeducational evaluations for 20 years and also provided therapeutic behavior services and training as a consultant to Contra Costa County.

average cognitive abilities with significant weaknesses in the areas of attention and visual-motor processing. Student demonstrated significant discrepancies between her abilities and her achievements in reading, reading comprehension, and math reasoning. In addition, Dr. Burke found Student exhibited anxious behaviors at school and at home, and more problematic rule-breaking and aggressive behaviors primarily in the home environment.

5. Dr. Burke determined, and recommended to Parent and District, that Student's deficits found during the assessment would qualify her as eligible for special education and related services under what Dr. Burke referred to as the "Learning Handicapped" criteria, referred to in the law as Specific Learning Disability (SLD), and under the category of Other Health Impaired (OHI) based primarily on ADHD-related behaviors.

6. However, Parent decided to keep Student at Concordia and did not want to have an IEP team meeting. Parent established that she had an informal meeting with District and Dr. Burke and communicated her decision to them. District therefore did not convene an IEP meeting or make an offer to Student of special education eligibility, placement, and services at any time after the assessment. Since Parent waived an IEP meeting and did not enroll Student in the District, Student remained a privately placed pupil. In 2012, Parent again asked District to assess Student. Pending the present dispute, Student remained at Concordia for the 2012-2013 school year and was still attending Concordia during the time of the hearing.

PROCEDURAL VIOLATIONS

7. There are two parts to the legal analysis of whether a school district offered a pupil a FAPE: whether the LEA has complied with the procedures set forth in the Individuals with Disabilities Education Act (IDEA), and whether the IEP developed through those procedures was substantively appropriate. Procedural flaws do not

require a finding of a denial of a FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE; or (c) caused a deprivation of educational benefits.

8. Here, all three of Student's issues involve claims of District's procedural violations of law. The evidence established that from May 2012 until shortly before the hearing, District did not convene an IEP team meeting to develop and offer an IEP to Student through the requisite IEP procedures. Therefore, the issues are evaluated to determine whether there was a procedural violation of law, and, if so, whether the violation was harmless error or denied Student a FAPE based on one or more of the above criteria.

MAY 2012 REQUEST FOR ASSESSMENT

9. Before any action is taken with respect to the initial placement of a child in special education, the school district must conduct an individual assessment to determine the nature and extent of any suspected disability and hold an IEP team meeting. The determination of eligibility is an IEP team decision. First, the school district must develop a proposed assessment plan within 15 calendar days of the referral for assessment unless the parent agrees to an extension. The parent or guardian has at least 15 calendar days from receipt of the assessment plan to decide. Upon receipt of consent, the district must then conduct the assessment and convene an IEP team meeting within 60 calendar days, excluding specified time periods.

10. Student contends that after Parent requested an assessment for special education in May 2012, District failed to timely convene an IEP team meeting to review the assessment. Student also argues that the IEP meeting should have been held within 30 days of the start of the 2012-2013 school year. In addition, Student contends that District should have held an IEP team meeting within 30 days after her August 28, 2012

request for the meeting. District concedes it did not timely hold the IEP team meeting but contends any violation should be excused because the actions of Parent and her attorney prevented District from timely convening the meeting, and because District's school site staff needed to further assess Student.

11. Due to Student's learning difficulties, Concordia had informed Parent in about kindergarten or first grade that Student could not adequately progress academically at its school unless Parent supplemented Student's education with the additional private services of a tutor. Parent retained a private tutor to provide Student one-to-one academic instruction twice a week.

12. In the spring of 2012, Student was in second grade at Concordia and was still struggling academically, even with a private tutor. Parent realized she needed to find out whether Student could enter the public school system in the District so she could obtain additional services to help her receive educational benefit, particularly in the area of reading. On May 7, 2012, Parent sent an email communication to the principal of Highlands Elementary School, Vicki Eversole; special education program specialist, Berry Murray; and District's alternative dispute resolution (ADR) administrator, Bryan Cassin, requesting an assessment for special education.

13. The subject line of Parent's email was titled: "Re-Assessment for Private school student." Parent informed District of Dr. Burke's 2010 assessment of Student and Parent's belief that District had "deemed" Student to be qualified for special education at that time. Parent indicated that she was "looking at placing [Student] into the public school system in the fall of 2012." She requested a psychoeducational assessment and asked District to contact her.

14. On May 8, 2012, Mr. Cassin replied to Parent by email stating he had arranged with Dr. Burke to conduct Student's assessment "over the summer."[5] He did not review Dr. Burke's 2010 assessment before he committed District to this assessment. He asked Parent if she wanted to proceed with an assessment. By email on the morning of May 9, 2012, Parent replied and agreed to go forward. District thereafter did not send Parent an assessment plan.

15. Mr. Cassin testified that District's failure to prepare and send a written assessment plan to Parent was an oversight. Student's complaint did not raise this as an issue. However, the omission is troubling as well as relevant to the calculation of the timelines District was required to meet in conducting Student's assessment and convening an IEP team meeting.

District's 2012 Assessment

16. At District's request, Dr. Burke assessed Student in August 2012, and issued a written report to District and Parent dated August 18, 2012.

17. Dr. Burke considered her prior 2010 assessment of Student, input from Parent and Student, Concordia progress reports, and formal test results. Student's second grade progress reports from Concordia showed she made "good progress" in most subjects but still struggled in reading. Dr. Burke did not interview any of Student's teachers or observe Student at Concordia because it was closed for summer vacation. Dr. Burke administered various formal assessment tests.

[5] Mr. Cassin has been the ADR administrator in the District since October 2011. In this capacity, he deals with initial requests for special education assessment, as well as mediations, resolution sessions, and due process hearings. He also handles case management of pupils in NPS placements. He has been in the education field since 2001, held a license as an occupational therapist and attended many IEP team meetings.

18. Dr. Burke reported and established at hearing that Student's full scale intelligence quotient (IQ) score was in the high average range. However, consistent with the 2010 assessment, Student's performance in the academic testing revealed a significant discrepancy between her IQ and her academic achievement in the areas of reading, reading comprehension, math, and math reasoning, which showed scores in the below average range compared to her peers. Overall, in 2012, Dr. Burke found Student's behaviors significantly improved from 2010, with no at-risk or clinically significant behaviors reported for attention, rule-breaking or aggression. However, Parent did report an at-risk score for continued anxiety. Parent described Student's anxious behaviors to Dr. Burke as "perfectionistic qualities, feeling nervous, feeling worthless, and excessive worrying." Dr. Burke found Student's impulsivity related to her ADHD had improved along with her fine-motor skills, which no longer needed remediation.

19. Dr. Burke concluded that Student "continues to be eligible for [special education] services" under the criteria for SLD, in that Dr. Burke found a significant discrepancy between Student's cognitive abilities and her achievement in reading, reading comprehension, math, and math reasoning.[6] In addition, she again concluded Student would be eligible under the OHI category because "her attention is an issue that permeates all areas of functioning."

20. Thus, as of August 18, 2012, or shortly thereafter, District was aware that its assessor, Dr. Burke, had determined and recommended that Student was eligible for

[6] Dr. Burke appeared to be under the mistaken impression that District had placed Student on an IEP as a special education pupil in 2010. Dr. Burke labeled her 2012 assessment as an independent educational evaluation as though the parties were engaged in an ongoing placement dispute, as opposed to an assessment for eligibility and initial placement. (See Ed. Code, § 56324.)

special education and related services. Dr. Burke made recommendations for District's instruction of Student at school, including contextual instructions, visual aids, placing her close to the teacher, repeated instructions in writing, modification of in-class work, more time to complete assignments, breaking down assignments into manageable parts, and multisensory teaching for math, such as TouchMath. Consistent with her recommendations in 2010, Dr. Burke did not recommend a restrictive school setting at an NPS.

DEADLINE BY WHICH DISTRICT SHOULD HAVE HELD AN IEP TEAM MEETING

For Review of the Assessment

21. As noted above, by law, District had 60 calendar days from receipt of parental consent to complete the assessment and hold an IEP team meeting. Summer vacation is among the time excluded from the calculation of when an IEP team meeting must be held. If consent for assessment occurs more than 30 days before the end of the first school year, the timeline resumes when the next school year starts. However, if consent for assessment occurs 30 days or less before the end of the school year, the IEP team meeting must be held within the first 30 days of the following school year.

22. District's school calendar for the 2011-2012 school year showed that the regular school year ended on June 14, 2012. The school calendar for the 2012-13 school year showed that the new school year began on August 29, 2012. Dr. Patton, the District's Special Education Administrator, testified that District should have held an IEP meeting by Friday, September 20, 2012, to review Dr. Burke's assessment.

23. Since District received parental consent for Student's assessment on May 9, 2012, a date that was more than 30 days before the end of the regular 2011-2012 school year, the timeline simply resumed when school started in the fall. From May 8, through June 14, 2012, 36 days elapsed. Beginning on August 29, 2012, District had 24

more days left within which to hold an IEP team meeting. Therefore, the IEP team meeting should have been held on or before September 21, 2012 (a Saturday). Since that was a weekend day, District would have had until the following Monday, September 23, 2012, to hold an IEP team meeting.[7]

24. However, District argues that it had an additional 15 days provided by law within which to send a written assessment plan to Parent for her consent and that those days should be included in the calculations.

25. District's argument is persuasive that it legally had 15 days after Parent requested an assessment on May 7, 2012, within which to send her a written assessment plan. Using this calculation, District's 60-day timeline to hold an IEP team meeting was tolled for an initial 15-day period. By law, District had until May 22, 2012, to send an assessment plan to Parent. District's timeline to assess and hold an IEP team meeting after receipt of consent began on the day after it failed to meet that deadline. Parent's consent is therefore deemed to be effective as of May 23, 2012. Parent's operative consent thus occurred less than 30 days before the end of the school year. District therefore should have convened the IEP team meeting to review the assessment within 30 days of the beginning of the new school year, or on or before September 28, 2012. District did not meet the deadline.

At the Start of the New School Year

26. Student contends that District should have held an IEP team meeting, made an offer, and had an IEP in place for her at the start of her 2013-2014 school year in third grade. District argues that Student was entering its school system as a privately

[7] Code of Civil Procedure section 12 provides that if the deadline falls on a Saturday, the timeline is extended to the following Monday (unless that Monday is a holiday, in which case the deadline extends to that Tuesday.

placed general education pupil and District was entitled to have her start school as a general education pupil until the IEP team meeting was held.

27. Student's argument is incorrect as a matter of law. A school district is required to have an IEP in place at the beginning of the school year for a pupil with a disability who has already been made eligible for special education. Here, Student had not yet been made eligible for special education and had no existing IEP or right to an IEP. As found above, the evidence established that District had until September 28, 2012, at the latest, to hold an IEP team meeting under the assessment law. Therefore, because Student was transferring as a general education pupil, District had no legal obligation to hold an IEP team meeting and have an IEP in place for Student at the start of the school year on August 29, 2012.

28. Student was a privately-placed general education pupil at Concordia at the time Parent requested an assessment in May 2012, and was not enrolled in the District. In mid-August, Dr. Burke communicated to Parent that Mr. Cassin requested Parent make sure Student was "formally enrolled" at her home school in the District "as part of the procedure of placement." On August 20, 2012, Parent filled out a registration packet for Highlands, Student's home school, and notified Mr. Cassin of that fact.[8]

[8] This is not the law. Enrollment in a district school is not required for a school district to convene an IEP team meeting to discuss an assessment and eligibility of a child. Here, Parent complied and filled out the form. However, she claimed Student was already a special education pupil, which was incorrect and may have delayed the form's passage to Mr. Cassin.

DISTRICT'S ATTEMPTS TO HOLD IEP TEAM MEETINGS IN THE FALL OF 2012

Meeting of August 21, 2012

29. On August 15, 2012, Parent was notified by Dr. Burke that District scheduled an "IEP team meeting" for August 21, 2012. Parent did not receive an IEP team meeting notice. Dr. Burke had arranged the meeting with Mr. Cassin. However, when Mr. Cassin talked to Dr. Patton, she informed him it could not be a valid IEP team meeting without requisite team members present.

30. The law requires the attendance of at least one general education teacher if it is possible the pupil would be placed in the general education setting. In addition, a special education teacher must attend who is familiar with the district's special education options for placement and related services. District witnesses and documentary evidence established that most of District's staff who would be legally required to attend an IEP meeting for Student as team members, including a general education teacher and a special education teacher, were on summer vacation until August 28, 2012.

31. The August 21, 2012 meeting was cancelled because Mr. Cassin informed Parent he still did not have verification that Student had registered or enrolled in the District. Since District had until September 28, 2012, to legally hold Student's initial IEP team meeting, the fact that District failed to hold an IEP team meeting on August 21, 2012, did not constitute a procedural violation.

Meeting of August 24, 2012

32. Mr. Cassin, Dr. Burke, and Parent agreed to re-schedule their meeting for August 24, 2012, and met on that day. Dr. Patton joined them at some point during the meeting. Parent and Dr. Burke again both thought this would be an "IEP team meeting."

Their persuasive testimony on this point was independent of each other, clear and unequivocal.

33. Mr. Cassin again did not send, or see to it that District staff sent Parent, Dr. Burke or any other IEP team members a formal IEP team meeting notice. Mr. Cassin conceded at hearing that he knew the meeting he arranged was not a valid IEP team meeting since talking with Dr. Patton about the earlier meeting. However, Mr. Cassin waited until the meeting started to inform Parent and Dr. Burke that the meeting they were attending was not an IEP team meeting.

34. In Mr. Cassin's view, he was attempting to meet informally with the family to assist Student's transfer into her public school of residency. However, he did not explain to Parent what his limited role was or what he was doing. He assumed Parent somehow understood his limited role and alluded to interactions with her regarding another one of her children. Mr. Cassin's communications with Parent, as most District email communications with Parent in this case, were short, curt, and devoid of much information.

35. Mr. Cassin explained at hearing that he is in charge of arranging a pupil's initial special education assessment and helps coordinate the case with appropriate staff. Mr. Cassin's role in the District is primarily limited to ADR, and by his own testimony, he generally has no role in matters that proceed to IEP team meetings, which are handled and scheduled by District's special education site staff at each school site. He refers the case to the District's "management team," that meets weekly on Mondays. When a parent requests an IEP team meeting, he refers the matter to the pupil's special education case manager at the school site. For Student, this person was Berry Murray, a District-level special education resource specialist assigned to Highlands and on the management team.

36. Prior to arranging for the August 24, 2012 meeting with Parent and Dr. Burke, Mr. Cassin should have explained to them that they should wait until school started to have an IEP team meeting, because necessary team members were not back from summer vacation. He did not do this. Mr. Cassin's actions led Parent to expect an IEP meeting on that date. Parent and Dr. Burke were surprised by the news and Parent was upset. As a single mother of three children, two of whom had special needs, Parent had arranged to take time from work to attend what she believed would be an IEP team meeting. Nevertheless, Parent cooperated and agreed to participate in the meeting informally.

37. Since District had until September 28, 2012, to legally hold Student's initial IEP team meeting, the fact that District failed to hold an IEP meeting on August 24, 2012, did not in and of itself constitute a procedural violation. Thus, District's failure to hold an IEP team meeting on August 24, 2012, did not violate special education law or deny Student a FAPE.

38. District argues that another way to look at this meeting would be to call it "part one" of an IEP team meeting that did not procedurally meet all components, including notice and attendance by team members required by law. Although substance is usually favored over form, District's analysis in this instance is rejected as it would reward District for complying with the legal requirement to timely hold an IEP meeting when it did not. As found above, Mr. Cassin made no attempt to schedule, notice and convene a legally constituted IEP team meeting.

39. During the meeting, District explained that Student was coming into the District from Concordia, where she was a general education pupil. Both Dr. Patton and Mr. Cassin explained to Parent that she needed to bring Student to school when school started on August 29, 2012, and that Student would initially be placed in the general education setting with various general education response-to-intervention (RTI) services

and supports, and additional assessments pending an IEP team meeting. This clearly did not constitute a formal offer of special education placement from the District to place Student in the general education setting. Parent informed District for the first time that she was considering asking for an NPS placement with Dr. Burke's encouragement. The parties then generally discussed District's obligation to provide services to Student in the least restrictive environment. There is no explanation in the record as to why the parties did not get out their calendars and set a date for the IEP team meeting.

40. Despite District's disclosure that this was not an IEP team meeting, Dr. Burke testified she mistakenly thought District made a special education offer to place Student in a third grade general education class at Highlands with special education RSP supports for the 2012-2013 school year. Dr. Burke displayed a critical lack of knowledge about Student's circumstances and District's legal obligations in the circumstances.

FAILURE TO HOLD AN IEP TEAM MEETING AFTER PARENT'S REQUEST OF AUGUST 28, 2012

41. The law provides that a school district must convene an IEP meeting within 30 days of parental request to review an existing IEP. Student contends that District should have convened an IEP team meeting within 30 days of her August 28, 2012 request for that meeting, and that its failure to do so constitutes independent grounds to find a denial of FAPE. As found below, although that calculated date, September 28, 2012, coincides with District's deadline under the assessment law, this theory is incorrect as a matter of law.

42. On Monday, August 27, 2012, District's management team met and discussed Student's admission and placement. The next day, Parent had a "horrible" conversation with the school principal at Highlands, Ms. Eversole. Parent became upset to learn that District still insisted Student should start school on August 29, 2012, in the

general education setting with RTI supports, and that Ms. Eversole had not yet read Dr. Burke's assessment report. Ms. Eversole mentioned "more assessments."

43. On August 28, 2012, shortly after the above conversation, Parent sent an email to many District personnel, including Mr. Cassin, Ms. Eversole, and Carol Koby, a special education resource specialist and District's RTI coordinator at Highlands, requesting an IEP meeting "as soon as possible." Parent relayed how she had been led to believe that two prior IEP meetings had been scheduled and not held. She lamented the lack of "a plan" in place for Student to start the school year. Parent concluded: ". . . I am requesting that a meeting be held as soon as possible to address the plan for [Student] *over this thirty day interim placement and assessment period.*" [Emphasis added.] On the same day, Ms. Koby responded to Parent's request as follows: "Please send [Student] to school tomorrow. I will read Dr. Burke's report in the morning, and make sure that [Student] has appropriate services."

44. Student had attended Concordia as a general education pupil with no special education supports and services whatsoever. Instead of being relieved to hear Student would immediately begin receiving RTI supports and an interim in-class assessment period, Parent balked and refused to bring Student to Highland until there was an IEP team meeting and offer from the District. Instead, Parent re-enrolled Student at Concordia. Parent took this action in spite of her knowledge of the interim transition period. The unavoidable impression is that Parent hoped withholding her daughter's attendance from school would expedite the holding of an IEP team meeting and an offer. At that point, Parent had decided she did not want Student to attend Highlands, and wanted an NPS placement instead.

45. Since Student was a general education pupil and had no existing IEP for District to review, District's failure to convene an IEP team meeting within 30 days of

Parent's request on August 28, 2012, did not constitute a procedural violation and did not deny Student a FAPE.

FAILURE TO SCHEDULE AN IEP TEAM MEETING THROUGH THE FALL OF 2012

46. As set forth in more detail below, at no time between August 24, 2012, and December 21, 2012, did District send Parent any formal notice to schedule an IEP team meeting to review its August 2012 psychoeducational assessment.

47. At hearing, District witnesses credibly explained the overall plan they internally developed and understood would apply to Student when she came to school as a third grade general education pupil. For example, the first week of school, starting on Wednesday, August 29, 2012, was a short week District used for "community building" to acclimate all pupils, including Student, to Highlands and the new school year. In the following weeks, Ms. Koby planned to pull Student out of class for informal assessments on her academic abilities, and Student's classroom teacher, a former special education teacher, would also observe and informally assess her academic skills. Ms. Koby established they also would have conducted informal assessments related to Student's reading deficits and strengths. This additional data would be used by the IEP team to develop Student's annual goals to be discussed at the IEP team meeting.

Assessment Plan of September 24, 2012

48. Much of Parent's correspondence with District and her testimony at hearing emphasized her objection to District's proposal to place Student in "general education." Overall, Parent emphasized that she would not place Student in a general education class without a specifically outlined plan of how she would be supported. Parent sent several emails to District staff in early September 2012, repeatedly asking for someone to explain what the plan of intervention supports was. No one responded

substantively to her requests for information to explain their internal plan described above. Instead, District repeated its direction for Student to attend school.

49. Having been informed that District wanted more assessments, Parent sent an email on September 4, 2012, asking District to let her know "when, where, and by whom the rest of the assessments will be completed." This request for specific assessment appointment times and places reflected Parent's mistaken belief that District was referring to formalized special education testing instead of informal in-class tests and observations. Mr. Cassin referred her to Ms. Murray to schedule an IEP team meeting. Parent replied that, since she had asked for the meeting, it was up to District to schedule it. Hilary Shen, District's parent liaison staff, sent an email saying she would look into the 60-day assessment timeline issue. District did not schedule an IEP team meeting.

50. Since District staff had been unable to informally observe and assess Student at Highlands because she never attended school, District next decided that it should offer to conduct a further formal assessment of Student to obtain information it believed was needed to conduct a meaningful IEP meeting. Accordingly, on September 24, 2012, District prepared and sent to Parent a formal written assessment plan.

51. District's assessment plan proposed to assess Student as follows: (a) in the area of academic achievement, a Woodcock Johnson III (WJ-III) academic assessment to be conducted by a District resource specialist; (b) in the area of health, a vision/hearing assessment by a District nurse; (c) in the area of intellectual development, a visual perception scales assessment by a school psychologist; (d) in the area of motor development, the Developmental Test of Visual-Motor Integration – Fifth Edition) (VMI) in "all sections," by a school psychologist; (e) the Behavior Assessment System for Children -2 (BASC-2) to assess adaptive behaviors; (f) in the area of phonology, a

"CTOPP/TAPS-3" by a school psychologist; and (g) alternative assessments by a school psychologist to conduct observations of Student and review her records.

52. District's September 24, 2012 assessment plan stated that, if Parent consented to the assessment, she would then be invited to attend an IEP team meeting. Accompanying the proposed plan was a document entitled "Prior Written Notice [PWN] for Initial Assessment," which again indicated there would be an IEP team meeting "following completion of the assessment." This document therefore communicated that District would not hold an IEP team meeting unless Parent consented to additional assessments. There was no cover letter to Parent explaining District's intentions. Parent declined to consent to the additional assessment.

53. The testimony of District staff on the issue of District's right to assess Student and the nature of its assessment process revealed their lack of understanding that Student was already in the midst of an assessment process agreed to by District in May 2012, and their lack of knowledge of the legal requirements applicable in the circumstances.

54. For example, Ms. Koby testified without hesitation her understanding that after Student was assessed during the initial interim general education period upon coming to Highlands, Ms. Koby would schedule a student study team (SST) meeting as a precursor to a formal referral for a special education assessment and it would be up to that SST team to determine whether to refer Student for assessment. Then District would issue an assessment plan to Parent and begin the statutory assessment period. Since District's assessment timeline had already begun by Parent's referral in the spring of 2012, Ms. Koby's testimony was wrong as a matter of law, and failed to reflect any understanding of the circumstances of this case.

55. As another example, even Dr. Patton did not see anything wrong with sending Parent an assessment plan in late September 2012, instead of convening the IEP

team meeting required by law. Dr. Patton testified that District staff found "gaps" in Dr. Burke's assessment and determined that more information was needed to make an offer of FAPE.

56. There is no evidence District consulted with Dr. Burke in offering another assessment. Dr. Burke was persuasive at hearing that most of the new assessment tests proposed were not appropriate or necessary. These repetitive assessment tests could skew Student's assessment results due to the "practice effect" of doing similar tests in a short period of time. For example, Dr. Burke had just administered the Wechsler Individual Achievement Tests – Third Edition (WIAT-III) for Student's academic levels of performance. She established that it would not have been appropriate for District to conduct the WJ-III, another academic achievement test, within a few months. Dr. Burke had already performed the VMI-V for Student's perceptual-motor skills so it should not be repeated. In addition, Dr. Burke was also persuasive that, in light of the Auchenbach behavioral assessment, the BASC-2 should not be performed so soon after her assessments.

57. There is no provision in the IDEA or California special education law that allows a school district to defer an IEP team meeting after assessment. The 60-day time line is mandatory unless the parent waives the timelines. There is no evidence in this case that District sought to ask Parent to waive the assessment timelines. Dr. Patton believed that District was required to convene Student's IEP team meeting by September 20, 2012. She was actually short by a week. At the IEP team meeting, District staff could have asked Dr. Burke questions about her assessment and determine whether District was ready to make an offer of eligibility or placement or needed more data for either recommendation. For example, District could have offered eligibility and an interim special education placement pending any further assessments it believed appropriate. The mere fact that Student was not attending Highlands, and had re-

enrolled at Concordia, did not extinguish District's obligation to hold the IEP meeting to complete the assessment process.

58. Instead of scheduling an IEP team meeting as required by law, District used up its remaining statutory time within which to hold an IEP meeting on attempts to have Student attend school and submit to further assessment, to no avail. At some point, Parent re-enrolled Student back at Concordia as a privately placed pupil. Concordia was a private general education school with no supports or interventions for Student. Parent's choice not to cooperate with District during an interim period was inexplicably interpreted by District as her intent not to place Student in the District.

Student's Due Process Complaint

59. By early October 2012, District again viewed Student as a privately placed pupil at Concordia and concluded that Student was no longer interested in coming into the public school system. District staff did not communicate with Parent or ask what her intentions were. District's decision to abandon the IEP team meeting process following assessment violated the law and constituted a procedural violation.

60. Parent consulted an attorney and on November 20, 2012, Student filed the instant complaint. OAH issued a scheduling order that set prehearing conference and hearing dates, along with a voluntary, confidential mediation on December 18, 2012, following the expiration of a 30-day resolution period.

61. The evidence showed that as a result of the OAH mediation, District agreed to permit Parent to observe possible District educational placements prior to convening an IEP team meeting.[9] Otherwise, District did not notice and schedule an IEP team meeting to be convened at any point before the end of the calendar year 2012.

[9] While the contents of a mediation are confidential, the results may be disclosed for enforcement purposes and both parties introduced this evidence without objection.

DISTRICT'S FAILURE TO HOLD AN IEP TEAM MEETING UNTIL FEBRUARY 27, 2013

Notice for January 9, 3013 Meeting

62. The parents of a child with a disability are critical members of the IEP team. California law requires that the parents be given notice of the IEP team meeting early enough to ensure an opportunity to attend. The law also requires the IEP team meeting to be scheduled at a mutually agreed-upon time and place. A school district may hold an IEP team meeting without a parent in attendance if the district is unable to convince the parent that he or she should attend. However, the district must maintain detailed records of telephone calls made or attempted, or copies of correspondence sent to the parent.

63. Student contends that the first time District scheduled an IEP team meeting was in a notice dated December 21, 2012, to set an IEP team meeting on January 9, 2013, and that District set the meeting date without consulting Parent or her attorney. The evidence supports this contention.

64. District's IEP team meeting notice dated December 21, 2012, was on the last school day before the winter recess. District did not negotiate the meeting date but unilaterally proposed and scheduled it. There is no evidence that Parent or Student's attorney prevented District from scheduling an IEP team meeting earlier. It was not until the OAH mediation on December 18, 2012, that Parent was even invited to look at possible placements being considered by District.

65. District has no record of any phone calls, emails or other preliminary attempts to mutually schedule an IEP team meeting until the attorney for the District, Mr. Juhl-Darlington, emailed Student's attorney, Ms. Washington, on January 2, 2013, with a copy of the IEP meeting notice. By letter dated January 3, 2013, Ms. Washington objected that the IEP team meeting was "premature" because, during the mediation, Mr. Cassin said he would get in touch with Parent to arrange her observations of proposed

placements, and had not yet done so. School started again on January 7, 2013. Thus, between December 21, and January 7, 2013, Parent was not able to see proposed placements because school was out. For District to schedule the IEP meeting only two days after the start of school, without consulting Parent and her attorney, was unreasonable.

66. Dr. Patton arranged for Parent to observe a proposed placement at Highlands in an SDC class for pupils with learning disabilities on January 8, 2013. Parent received notice of this opportunity the day before the IEP meeting but rushed to attend. However, since Parent was only able to see one placement before the IEP team meeting, Ms. Washington's cancellation of the meeting was not unreasonable, as multiple observations had been promised and District did not schedule enough time after the winter recess and before the meeting.

Notices for February 2013 IEP Team Meetings

67. On February 5, 2013, District issued a second IEP team meeting notice scheduling the meeting for February 22, 2013. Again, there is no record of any attempt to negotiate this date, and District unilaterally proposed and scheduled it. District did not explain why it waited so long to even send notice of an IEP meeting. Ms. Washington cancelled the meeting because both Parent and Dr. Burke were not available on that date. There was no evidence to the contrary. Unilateral IEP meeting notices do not comply with the law to make good faith efforts to schedule mutually agreeable dates for IEP team meetings.

68. Following negotiation by the parties' attorneys, Mr. Juhl-Darlington and Ms, Washington, an IEP team meeting was scheduled. On February 14, 2013, Mr. Juhl-Darlington sent a letter to Ms. Washington and proposed two dates for an IEP meeting after confirming Dr. Burke would be available: either February 20, or February 26, 2013. Ms. Washington was unavailable on either date due to her schedule and proposed

either February 27, or 28, 2013. In a series of emails thereafter, the parties negotiated to hold the IEP team meeting on February 27, 2013. On February 21, 2013, District issued a formal IEP team meeting notice for February 27, 2013, at 12:30 p.m.

69. District had scheduled the IEP team meeting to start at 12:30 p.m., when Dr. Burke was available. But Student's tutor was available only in the morning. District then proposed to start the meeting at 11:00 a.m., to accommodate the tutor. District insisted it could start the IEP team meeting in the morning without Dr. Burke, and thus Dr. Burke would not have the benefit of hearing from the tutor, and vice versa. Given the difficulties scheduling the attendance of Student's tutor and Dr. Burke at the same time, Ms. Washington announced on February 22, 2013, that Student declined the District's last minute attempt to hold an IEP meeting prior to the start of the due process hearing.

70. On February 27, 2013, District held the IEP team meeting and Parent, her attorney, and Student's requested participant did not attend the meeting. Dr. Burke did attend the meeting. At the IEP team meeting, without Student or her attorney, District offered Student eligibility for special education and related services. District made an offer of placement and services, but that offer is not at issue in this proceeding.

71. Based on the foregoing, District committed procedural violations by not conducting an IEP team meeting at any time from September 28, 2012 through the end of February 2013.

DISTRICT'S FAILURE TO MAKE AN OFFER OF ELIGIBILITY AND FAPE

72. Special education law provides that a pupil's eligibility is an IEP team decision, as is the consideration of assessment and parental information and the offer of any special education placement and related services. At Student's IEP team meeting, the team members would consider the data and negotiate toward a consensus as to whether Student was or was not eligible for special education services, depending on a

myriad of factors that are not at issue in this matter. The law provides that the IEP developed at an IEP team meeting must contain a formal, written offer.

73. Student contends District failed to make a formal, specific written offer that identified Student's proposed special education eligibility, placement (program and placement) and related services (including frequency and duration). District contends it could not make an offer of any kind to Student without completing its assessments and holding an IEP team meeting.

74. Student argues that District did not make a formal written offer of its "general education placement" at Highlands. This argument is rejected. As found above, District's general education offer, made first at the August 24, 2012 meeting and reiterated for weeks after, was not an offer of any type of special education services but merely for an interim placement pending the IEP team meeting at which eligibility, placement and services would be determined.

75. Overall, however, District cannot avoid its responsibility to have timely made Student an offer that included eligibility for special education, placement and related services by merely delaying and not convening an IEP team meeting. The evidence established that, if District had timely convened an IEP team meeting by September 28, 2013, the IEP team would have determined that Student was eligible for special education and made a formal offer of at least eligibility if not placement and services. There is no persuasive evidence that something occurred between then and February 27, 2013, when District finally found her eligible, which materially altered the nature of Student's disabilities and deficits, or the nature and scope of the information known to the District.

76. For example, District witnesses testified that further informal assessments, classroom observations, and formal assessment tests would have aided the IEP team to develop annual goals for Student and better understand the nuances of her deficits.

District also claimed it needed but was unable to obtain information from Concordia about Student's performance in the general education setting. However, no witnesses testified that they had any doubt whatsoever of her eligibility for special education. District did not establish any material deficiency in Dr. Burke's assessments or professional opinion that Student was eligible for special education under either or both the SLD and OHI categories in 2010, and again in 2012.

77. Significantly, the evidence established that when District finally offered Student eligibility and services at the end of February 2013, District did so without having conducted additional assessments under its September 2012 assessment plan, to which Parent never consented. In addition, District did so without having obtained information from Concordia and without having Student in a general education class at Highlands. Consistent with Dr. Patton's own testimony, while such additional data would have been "helpful," it was not necessary to find Student met the legal criteria for eligibility.

78. District's defense that it was excused from convening an IEP team meeting and making an offer because Parent abandoned her request for special education services is belied by the evidence. As found above, District knew its retained educational psychologist, Dr. Burke, had determined Student's special education eligibility, and had made school-based recommendations. District knew Parent had begun asking for a special education NPS placement instead of at Highlands. District knew or should have known that the existence of due process litigation does not toll timelines for a school district's statutory obligations under the IDEA. If District could avoid liability for failing to make a formal offer in these circumstances, it could simply never hold an IEP team meeting to avoid making a pupil eligible for special education. District should have held an IEP team meeting and made a formal IEP offer that would consider Parent's requests

and offer special education eligibility and placement of some sort, even pending further assessments.

79. Based on the foregoing, Student sustained her burden to establish that District committed a procedural violation by failing to timely make a formal, written offer of special education eligibility, placement and services.

IMPACT OF PROCEDURAL VIOLATIONS

80. In this case, it has been determined that District committed a procedural violation of special education law by failing to convene an IEP team meeting within 60 days following Parent's consent on May 9, 2012, for an assessment, less specified time periods. In addition, District thereafter failed to engage in any bona fide attempts to schedule an IEP team meeting until it issued the IEP meeting notice of December 21, 2012. Although Student declined the IEP meeting date of January 9, 2013, there is no reason set forth in the record why the parties could not have mutually agreed on a date later in January, or in early February 2013, well before the end of the month. Finally, District committed a procedural violation by failing to timely make a formal, written offer until the end of February 2013.

81. These violations impeded Student's right to a FAPE. District retained Dr. Burke to conduct Student's assessment and Dr. Burke recommended, for the second time since 2010, that Student was eligible for special education and should receive specialized instruction and related support services in the District. District did not require additional material data from more assessments or from Concordia to come to that conclusion. Thus, absent an earlier IEP team meeting and offer, District's actions impeded Student's right to a FAPE. In addition, the violations caused Student to be deprived of educational benefits that an earlier IEP team meeting would have provided, by District's earlier offer of placement along with special education supports.

82. Parent's refusal to cooperate with District's request for an interim informal assessment and transition period by bringing Student to school is troubling. In that regard, Parent's refusal to work with District was unreasonable because Student had no legal right to be immediately enrolled in the District as a special education pupil with an IEP.

83. In the end, however, it was not shown that Parent's actions interfered with District's ability or obligation to convene an IEP team meeting. First, special education law does not provide that a school district may indefinitely postpone convening the IEP team meeting pending "further assessment." Instead, those decisions should be made by the IEP team members at the initial eligibility team meeting. Here, the period of Parent's noncooperation only lasted about a month until she received District's proposed assessment plan in late September 2012, and District's PWN, in which District essentially refused to hold an IEP meeting pending further assessment.

84. Based on the foregoing, District's violations denied Student a FAPE from September 28, 2012, through February 26, 2013, the day before the IEP team meeting and offer of placement and services. The first month during which Parent did not cooperate to allow District staff to work with Student is excluded because it coincides with the time within which District could have legally convened an IEP team meeting. This deprivation of educational benefit thus lasted about five months. Student is therefore entitled to relief.

REMEDIES

85. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a free appropriate public education. The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. The award should be reasonably calculated to provide the

educational benefits that probably would have accrued from special education services the school district should have provided.

Compensatory Academic Instruction

86. An award of compensatory education need not provide a "day-for-day compensation." An award to compensate for past violations must rely on an individualized evaluation, just as an IEP focuses on the individual student's needs.

87. Student's complaint requested compensatory education in the form of one-to-one intensive instruction in all core academic areas, to be provided by an NPA. The OAH Order Following Prehearing Conference (PHC Order) dated February 25, 2013, at paragraph 12, informed Student in part that "[a]ny party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education."

88. Student's request for compensatory academic instruction is denied. First, Student did not argue in favor of it in her closing brief and appears to have abandoned it. Second, to the extent the request was not abandoned, Student did not present any evidence to support it. No witnesses from Concordia were called to establish Student's academic performance from the fall of 2012 to the time of hearing; nor was Student's tutor called to testify as to Student's academic strengths and weaknesses. Dr. Burke had conducted the WIAT-III showing a significant discrepancy in Student's standard scores for reading and math related to her suspected SLD disability. However, Student did not present any evidence from any witness as to the type, amount, duration or need for any intensive remediation. Finally, Student's requests for reimbursement show that Student again received private tutoring services beginning November 2012, and is not entitled to a double recovery of being reimbursed for those tutoring services, and also being provided with additional remedial services.

Prospective Educational Placement

89. Student's request for prospective placement at a private school is denied on the basis of both lack of authority and insufficient evidence. The law prohibits the ALJ from awarding Student prospective placement at a school that is not an NPS certified by the California Department of Education to educate pupils.[10] The evidence established that Concordia is a private Montessori school and not a certified NPS. Therefore, Student's request for prospective placement at Concordia, assuming eligibility, is denied.

90. Second, Student's request for a prospective placement at Raskob to compensate for her loss of educational benefit and denial of FAPE is also denied. There is no competent evidence that Raskob is a certified NPS. Ms. Washington's footnote in her brief that Raskob is an NPS located in Oakland is not evidence. Aside from Dr. Burke's testimony that she recommended Parent research Raskob as a possible placement for Student in August 2012, there is scant evidence in the record as to what kind of school Raskob is, and whether it could possibly address Student's needs. No one from Raskob testified. While Dr. Burke informed Parent that Raskob would be an appropriate option for Student in August 2012, Dr. Burke did not present, by competent evidence, anything to recommend it for Student. Moreover, Parent established Raskob turned down her application for Student's enrollment for reasons not disclosed in the record. As of the hearing, there was no evidence Raskob was an available placement, even if an NPS.

91. In addition, there is no evidence Student requires a restricted special education placement at a private school for children with disabilities to address her needs. In 2010, Dr. Burke recommended to Parent and the District that Student could be placed in the public school system with special education resource support services and

[10] Education Code section 56505.2.

did not recommend an NPS placement. In 2012, Dr. Burke's assessment derived similar results, and she again did not recommend an NPS placement in the report. She listed multiple recommendations for District to address Student's needs at a comprehensive public elementary school campus and made no mention of any concern that Student needed a restrictive placement. Dr. Burke's recommendations included placing Student close to the teacher, reducing the amount of in-class work, giving her more time to complete assignments, and using multisensory programs.

92. Dr. Burke testified persuasively that an NPS placement was not necessary for Student to receive educational benefit but she needed appropriate transitional supports. Dr. Burke explained that she delved into private placements over the summer as Parent requested information on her options. When Dr. Burke thought District was offering "general education" as a special education placement, she became concerned because Student's reading was at such a low level she required a smaller special education classroom and lower teacher/pupil ratio. In addition, Dr. Burke testified Student exhibited anxious behaviors that could relapse if she were not appropriately supported, although she did not explain why these behaviors were not highlighted in her report. Dr. Burke later found out she misunderstood District's intent for the initial fall transition. In addition, as of the hearing, she has become aware that District has a special day class for pupils with learning handicaps (LH-SDC) which would provide Student the smaller class size she needs on a public school campus.[11] Based on the foregoing, Student's request for prospective placement at an NPS is denied.

[11] This Decision makes no findings regarding the appropriateness of District's LH, SDC, or other similar classes but solely addresses equitable remedies.

Reimbursement for Parent's Past Costs

93. Parents may send their child to a private program and seek retroactive tuition reimbursement from the state. An ALJ may award reimbursement for a private school placement if a school district unreasonably finds a child with disabilities ineligible for services under IDEA or otherwise denies the child a FAPE and the private school placement is appropriate. A parent is not barred from seeking tuition reimbursement because the child did not previously receive special education. This authority extends to reimbursements for private schools that do not meet state standards or otherwise does not meet FAPE criteria.

94. Student requests reimbursement both for Parent's costs incurred in privately placing Student at Concordia during the pendency of this dispute, and for costs incurred for Student's private tutor, Lisa Snortum-Phelps, M.A., a learning specialist. District contends Student is not entitled to reimbursement for tuition costs at Concordia because it was not an appropriate school for Student.

95. Dr. Burke's 2010 assessment included observation of Student at Concordia, interviews of Concordia teachers for Student's functional and academic progress, and reliance on its Montessori grading system for progress reports. In 2012, Dr. Burke would again have obtained observations and information from Concordia for her assessment but the school was out for the summer. Dr. Burke opined that Concordia's teaching style differed somewhat from that utilized by the District, in that the Montessori methods were more self-directed and self-guided, whereas District would have provided Student with interventions and supports to remediate her deficits. While Dr. Burke felt Concordia was not a "good match" for Student's reading or math deficits, she acknowledged the school provided a good "knowledge base." Parent testified Concordia wanted her to hire a private tutor to provide additional more intensive instruction to help Student benefit, and Parent complied.

96. In the circumstances of this case, to deny Student reimbursement of Parent's costs to educate her during the period in which District failed to hold an IEP team meeting and make an offer based on District's August 2012 assessment, would be to deny her any remedy. Since there generally should be a remedy to redress District's denial of FAPE, District's criticisms of Concordia are therefore overruled. The evidence established that Concordia is a bona fide private school which Student has attended since the age of three and a half. While it may differ from District's elementary schools in its methodologies, it is not thereby rendered inappropriate for purposes of reimbursement. District's temporary general education class with RTI is not considered as a comparable alternative because it was not a special education placement and District failed to make any offer of special education placement during the period in which it denied Student a FAPE. Although Concordia's lack of specialized interventions and supports for Student render it an imperfect choice, this deficiency is remedied by also granting Student's request for reimbursement for the tutor Parent retained at Concordia's request. Having established Student's right to reimbursement of both school tuition and tutoring as an equitable remedy, there remains the question of the amounts.

97. During the hearing, certain deficiencies with respect to Student's invoices and statements to support reimbursement became apparent, and the ALJ permitted Student to make a motion to supplement the record. On March 18, 2013, Student's motion was granted and Exhibit S-36 was marked for identification and admitted into evidence. Student's evidence shows that Parent paid Concordia the total sum of $5,381, as tuition for Student for the 2012-2013 school year through February 2013. It is unclear from Concordia's statement what the monthly tuition fee is, as it appears to vary. In addition, it is not clear why Parent made payments in June, July and August 2012, that Concordia allocated toward this school year. Parent testified the tuition was at a

discounted rate for Student. Although the ALJ is unable to calculate an average monthly tuition from the itemization provided, because it appears to be based on varying days of attendance, Parent testified persuasively that he total amount paid as of the end of February 2013.

98. Student is entitled to reimbursement of the costs of Parent's placement of Student at Concordia beginning at the end of September 2012, after District failed to hold an IEP team meeting within the statutory timelines after assessment. While Student claims tuition reimbursement beginning in late August, Parent's refusal to bring Student to school beginning August 29, 2012, was unreasonable and not justified by law in that District was not required to have an IEP in place for her at the beginning of the school year. Student was a general education pupil at that time, and District planned to work with her with qualified teachers in its third grade curriculum with RTI support and interventions. Thus, the sum of $600 for the month of September 2012 is deducted from the total Parent paid of $5,381. District shall therefore reimburse Student for Parent's costs of tuition at Concordia in the total sum of $4,781 through February 2013. In addition, District shall reimburse Student for Parent's costs at Concordia through the date of this Decision based on invoices or statements to be submitted.

99. Student established that Parent paid Ms. Snortum-Phelps for private instruction at the rate of $40 per hourly session, twice a week, from November 26, 2012, through February 8, 2013, in the total amount of $1,040. District shall reimburse Parent for this amount. In addition, District shall reimburse Student for Parent's tutoring costs through the date of this Decision based on invoices or statements to be submitted.

Compensatory Reimbursement for Future Costs for the 2012-2013 School Year

100. By law, the present Decision is due to be issued no later than May 6, 2013. District's school calendar for the 2012-2013 school year shows that the regular school

year will end on Thursday, June 13, 2013. Thus, Student has remained in school at Concordia for most of this school year.

101. The ALJ finds that, based on the evidence, it may be inequitable for Student to have to spend the remaining six weeks or so of the 2012-2013 school year in a new school by reason of the above orders. Nor should Parent suffer financially for choosing to allow Student to end the school year with her peers and friends without reimbursement. Accordingly, as a further compensatory and equitable remedy, and not as a prospective placement, District shall also reimburse Parent, should Parent choose to keep Student enrolled at Concordia, for the monthly tuition and tutoring costs incurred by Parent through the end of the regular 2012-2013 school year, based on invoices or statements to be submitted to District.[12]

Staff Training

102. Staff training may also be an appropriate equitable remedy for a violation of the IDEA. Here, District's special education staff, including administrators, have overall displayed a significant lack of knowledge of the laws pertaining to a special education assessment and the applicable timelines for holding an IEP team meeting to review the assessment. Mr. Cassin gave no thought to the applicable requirements, failed to schedule deadlines, and failed to explain the deadlines to the special education school site personnel who took over Student's case and should have scheduled Student's IEP team meeting. Even the RSP management staff thought starting over with an SST meeting was appropriate. Staff ignored the requirements to convene an IEP team meeting by making unilateral decisions predetermining, in the absence of an IEP team

[12] In the alternative, Parent may waive this optional relief and choose to transfer Student into the District before the end of this school year in connection with an IEP or agreement otherwise with the District.

meeting, to seek further information. Their use of a PWN to refuse to convene an IEP team meeting until Parent agreed to a new assessment plan was egregious. Because some of the applicable laws are complex, it is estimated that no less than four hours shall be required for this training. Therefore, District shall train its special education staff in the areas relating to the timelines applicable to conducting an assessment and convening an IEP team meeting to review the assessment, as set forth below.

LEGAL CONCLUSIONS

1. Student has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

FAPE AND RELATED SERVICES

2. The IDEA provides states with federal funds to help educate children with disabilities if the state provides every qualified child with a FAPE that meets the federal statutory requirements. Congress enacted the IDEA "to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ." (20 U.S.C. §§ 1400(c), 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.)

3. FAPE is defined as special education and related services that are available to the pupil at no cost to the parent or guardian, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5 § 3001, subd. (o).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs.

(*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.) In addition, the educational needs include functional performance. (Ed. Code 56345, subd. (a)(1).)

Procedural Violations

4. There are two parts to the legal analysis of whether a school district offered a pupil a FAPE, whether the LEA has complied with the procedures set forth in the IDEA, and whether the IEP developed through those procedures was substantively appropriate. (*Board of Educ. of the Hendrick Hudson Cent. School Dist. v. Rowley* (1982) 458 U.S. 176, 206-07 [73 L.Ed.2d 690], cited as *Rowley.*) Procedural flaws do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

ASSESSMENTS

5. California law sets forth specific requirements for assessment of pupils for suspected disabilities. Before any action is taken with respect to the initial placement of a special needs child in special education, an individual assessment shall be conducted by qualified persons. (Ed. Code, § 56320.) Education Code section 56029 provides that a "referral for assessment" includes a written request for assessment made by a parent or guardian of the child. California regulations make it clear that: "[a]ll referrals for special education and related services shall initiate the assessment process and shall be documented." (Cal. Code Regs., tit. 5, § 3021, subd. (a).) Once a district receives a referral

for assessment the district must develop a proposed assessment plan within 15 calendar days, not counting days such as school vacations, unless the parent agrees to an extension. (Ed. Code, § 56043, subd. (a).) The parent or guardian then has "at least" 15 calendar days from receipt of the assessment plan to decide. (Ed. Code, § 56043, subd. (b).)

CONVENING IEP TEAM MEETINGS AFTER INITIAL ASSESSMENT

6. Once a pupil has been referred for an initial assessment for eligibility, an IEP team meeting must occur within 60 calendar days of receiving parental consent for the assessment. (56043, subd. (c); Ed. Code §§ 56302.1, subd. (a).) Convening an IEP team meeting is mandatory whenever a pupil has received an initial formal assessment. (Ed. Code § 56343, subd. (a).) The 60-day time period excludes "days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension." (*Ibid*; Ed. Code § 56344, subd. (a).) There are exceptions to the 60-day timeline that are not applicable in this case. (Ed. Code §§ 56302.1, subd. (b)(1) and (2).)

7. Education Code section 56344, subdivision (a) also provides that an IEP required as a result of an assessment "shall be developed within 30 days after the commencement of the subsequent regular school year." This timeline only applies to a pupil for whom a referral was made within "30 days or less prior to the end of the regular school year." (*Ibid.*) Otherwise, the 60-day timeline recommences on the date the schooldays reconvene after school vacation. (*(Ibid.*) The date calculations are to be determined by the LEA's school calendar. (*(Ibid.*)

8. The IEP team determines from the assessments whether the child is eligible for special education. (Ed. Code, § 56329, subd.(a)(1). An IEP team meeting to develop an initial IEP shall be conducted within 30 days "of a determination that the

pupil needs special education and related services pursuant to Section 300.323(c)(1) of Title 34 of the Code of Federal Regulations." (Ed. Code § 56344, subd. (a).)

9. For a pupil who already has an IEP, the LEA is required to have an IEP in effect at the beginning of each school year. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a) (2006); Ed. Code, § 56344, subd. (c).)

After Parental Request

10. A school district must convene an IEP team meeting whenever a parent or teacher requests a meeting to *develop, review, or revise* the IEP. (Ed. Code § 56343, subd. (c).) [Emphasis added.] Section 56343, subdivision (c) itself does not contain any time deadlines. For an initial assessment, the above specific timelines control.

11. However, where a parent requests an IEP team meeting to *review* an existing IEP pursuant to Education Code section 56343, subdivision (c), the IEP team meeting must be held within 30 days from the date of receipt of the written request, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays. (Ed. Code, § 56343.5.) This provision applies where a pupil already has already been made eligible for special education and has an IEP for review.

REQUIRED PARTICIPANTS IN IEP TEAM MEETINGS

12. The IDEA and California education law require certain individuals to be in attendance at every IEP team meeting. In particular, the IEP team must include: (a) the parents of the child with a disability; (b) not less than one regular education teacher of the child, if the child is or may be participating in the regular education environment; (c) not less than one special education teacher, or where appropriate, not less than one special education provider of the child; (d) a representative of the school district who is knowledgeable about the availability of the resources of the district, is qualified to

provide or supervise the provision of special education services and is knowledgeable about the general education curriculum; (e) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above; (f) at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (g) whenever appropriate, the child with a disability. (20 U.S.C. § 1414 (d)(1)(B); Ed. Code, § 56341, subd. (b).)

ATTEMPTS TO SCHEDULE IEP TEAM MEETING AT MUTUALLY AGREED-UPON TIMES

13. The parents of the child with a disability are critical members of the IEP team. California law requires the school district to give the parents notice of the meeting early enough to ensure an opportunity to attend. (Ed. Code, § 56341.5, subd. (b).) The law also requires the IEP team meeting to be scheduled at a mutually agreed-upon time and place. (Ed. Code, § 56341.5 (c).) A district may hold an IEP team meeting without a parent in attendance if the district is unable to convince the parent that he or she should attend. (Ed. Code, § 56341.5, subd. (h).) However, if a district holds a meeting without the parent in attendance, it must "maintain a record of its attempts to arrange a mutually agreed-upon time and place" such as detailed records of telephone calls made or attempted, or copies of correspondence sent to the parent. (34 C.F.R. § 300.322(d); Ed. Code, § 56341.5, subd. (h); see *Shapiro v. Paradise Valley Unified School Dist.*, No. 69 (9th Cir. 2003) 317 F.3d 1072, 1077-1078.)

Issue 1: Did District deny Student a FAPE for the 2012-2013 school year by failing to timely conduct an IEP team meeting after Parent requested an assessment in May 2012?

14. As set forth in Factual Findings 10 through 40, and Legal Conclusions 5 through 13, after Parent requested an assessment for special education on May 7, 2012, District failed to convene and conduct and IEP team

meeting within 60 calendar days thereafter, less specified time periods including summer vacation. An initial 15-day time period tolled the timeline, during which District should have but did not provide a written assessment plan. Given the effective date of parental consent on May 23, 2012, within 30 days of the end of the 2011-2012 school year, District should have conducted the IEP meeting within 30 days of the start of the school year, or on or before Friday, September 28, 2012. District failed to meet the deadline and therefore committed a procedural violation of special education law. Since District did not immediately remedy this violation, it continued on an ongoing basis until District finally conducted an IEP meeting on February 27, 2013, when Student was finally offered special education eligibility, placement and services. Based on the continuing violation, Student's right to a FAPE was impeded for over five months, and she was deprived of educational benefit. Accordingly, Student established that District's violation denied her a FAPE.

Issue 2: Did District deny Student a FAPE for the 2012-2013 school year by failing to timely conduct an IEP team meeting after Parent requested an IEP meeting on August 28, 2012?

15. As set forth in Factual Findings 41 through 45, and Legal Conclusions 5 through 14, District was not required to schedule an IEP team meeting within 30 days of Parent's August 28, 2012 request for such a meeting. The law requiring a school district to immediately convene an IEP team meeting when a parent requests a review his or her child's IEP applies only to a parental request to review the existing IEP of a pupil already eligible for special education. As such, that law did not apply to Student, who was a general education pupil transferring into the District from a private general education school. Accordingly, District did not deny Student a FAPE on this basis.

IEP'S

16. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) An IEP is a written statement that includes a statement of the present performance of the pupil, a statement of measurable annual goals designed to meet the pupil's needs that result from the disability, a description of the manner in which progress of the pupil towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the pupil can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved, among other things. (20 U.S.C. § 1414 (d)(1)(A)(i),(ii); 34 C.F.R. § 300.320(a)(2), (3) (2006); Ed. Code, § 56345, subds. (a)(2), (3).)

FORMAL WRITTEN OFFER

17. The IEP developed at an IEP team meeting must contain a formal written offer. An IEP offer must be sufficiently clear that a parent can understand it and make intelligent decisions based on it. (*Union School Dist. v. Smith*, (9th Cir. 1993) 15 F.3d 1519, 1526.) In *Union,* the Ninth Circuit observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Id.* at p. 1526). A failure to make a formal written FAPE offer has been held

to be harmless error where parents were aware of the District's offer as they fully participated in the IEP process. (*J.W. v. Fresno Unified School District* (9th Cir. 2010) 626 F.3d 431, 460-461 (*Fresno*).)

> Issue 3: Did District deny Student a FAPE for the 2012-2013 school year by failing to make a formal, specific written offer of a FAPE that identified the proposed program (placement and related services), and the start date, frequency, location, and duration of the program?

18. As set forth in Factual Findings 5 through 79, and Legal Conclusions 5 through 17, District may not avoid the legal requirement for a formal, written offer of FAPE merely by delaying and not convening an IEP team meeting required by law. Here, the evidence established that Student was eligible for special education placement and related services in September 2012. Thus, the nature of Student's disabilities and/or the information known to the District did not render her ineligible in September 2012, and suddenly eligible in February 2013. District did not establish that Parent's refusal to bring Student to Highland constituted an abandonment of her request for special education or that her attendance was necessary for a determination of eligibility. Nor did it justify District's decision to abandon the IEP team meeting process and refuse, in the PWN of September 24, 2012, to hold an IEP team meeting unless Parent agreed to a new assessment plan that started all assessment timelines all over again. District's actions were unreasonable and its failure to timely make a formal, written offer constituted a procedural violation. This violation impeded Student's right to a FAPE and denied her educational benefit as it delayed her receipt of special education services to which she was entitled.

REMEDIES AND COMPENSATORY EDUCATION

19. When an LEA fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*School*

Committee of Burlington v. Department of Educ. (1996) 471 U.S. 359, 369-371; 20 U.S.C. § 1415(i)(2)(C)(3).)

20. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a free appropriate public education. (*Student W. v. Puyallup School District, supra* 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Ibid.*) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

21. When a parent unilaterally seeks appropriate replacement services that the District has not provided because of a procedural violation of the IDEA which denies the pupil a FAPE, the parent has an equitable right to reimbursement. *(W. G., et al., v. Bd. of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, at 1485.) To be appropriate, the parent's private placement does not have to meet the standards of a public school offer of FAPE. (Ed. Code, §§ 56175, 56176; 34 C.F.R. § 300.148(c) (2006).) This authority extends to reimbursements for private schools that do not meet state standards. (*Florence CountySch. Dist. v. Carter*, 510 U.S 7, 14 (1993) (*Carter*) [rejecting contention "that reimbursement is necessarily barred by a private school's failure to meet state education standards."].) In *Carter*, the court stated: "it hardly seems consistent with the Act's goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of

approval of the same public school system that failed to meet the child's needs in the first place."

22. Parents are not barred from seeking reimbursement for the cost of private tuition just because their children did not previously receive special education. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230.)

23. As set forth in Factual Findings 5 through 101, and Legal Conclusions 4 through 22, District denied Student a FAPE on an ongoing basis between the end of September 2012, and the end of February 2013, a period of over five months. Most of the month of September 2012 is excluded because District was legally within the time limit to hold an IEP team meeting, and Parent refused to cooperate to bring Student to school for an interim transition period. District's denial of FAPE was an ongoing violation that continued until the IEP team meeting was finally held and a written offer of FAPE was made. District's complaints that Student never attended public school, and never intended to, are of no avail. Even if Parent never intended to enroll Student in a public school, they were still entitled to the protections of the IDEA. All District had to do to avoid this result was timely convene Student's initial IEP team meeting and consider the information in the assessment of Dr. Burke that the District had procured at Parent's request in May 2012, Parent's concerns, and the concerns, data, and opinions of all other IEP team members.

24. Based on the foregoing, Student is entitled to equitable relief as ordered below.

Staff Training

25. The IDEA does not require compensatory education services to be awarded directly to a pupil. Staff training is an available remedy that may be appropriate in the circumstances of a case. An order providing appropriate relief in light of the purposes of the IDEA may include an award of school district staff training regarding the

area of the law in which violations were found, to benefitthe specific pupil involved, or to remedy procedural violations that may benefit other pupils.(*Park, ex rel. Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1034.) [student who was denied a FAPE due to failure toproperly implement his IEP could most benefit by having his teacher appropriately trained todo so]; *Student v. Reed Union School District,* Cal.Ofc.Admin.Hrngs. Case No. 2008080580[requiring training on predetermination and parental participation in IEP's]; *San DiegoUnified Sch. Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring trainingregarding pupil's medical condition and unique needs].

26. As established by Factual Findings 5 through 102, and Legal Conclusions 4 through 25, the failure of District's staff to know, understand and apply the special education laws applicable to the special education assessment timelines, including the timely holding of an IEP team meeting to review the assessment, were significant in this case.Staff training is therefore an appropriate equitable remedy.

ORDER

1. As a compensatory remedy, within 30 calendar days of the date of this order, District shall reimburse Parent for school tuition costs incurred for Student's attendance at Concordia from October 1, 2012, through the end of February 2013, in the total amount of $4,781.

2. District shall further reimburse Parent for school tuition costs incurred for Student's attendance at Concordia from March 1, 2013, through the date of this Decision, and, at solely at Parent's option, through the end of the regular 2012-2013 school year, at the rate of $600 per month.District's reimbursement shall be made within 45 calendar days of receipt of standard proofs of costs and payment, including invoices, cancelled checks, and/or a declaration under penalty of perjury from Concordia

personnel as to sums actually paid by Parent and received by them for the above time periods.

3. As a compensatory remedy, within 30 calendar days of the date of this order, District shall reimburse Parent for Student's private academic remediation tutoring or instruction costs incurred on behalf of Student from November 2012, through the end of February 2013, in the total amount of $1,040.

4. District shall further reimburse Parent for Student's private academic remediation tutoring or instruction costs incurred from March 1, 2013, through the date of this Decision, and, at solely at Parent's option, through the end of the regular 2012-2013 school year, at the rate of $40 per hourly session, not to exceed twice per week. District's reimbursement shall be made within 45 calendar days of receipt of standard proofs of costs and payment, including invoices, cancelled checks, and/or a declaration under penalty of perjury from the private tutor or instructor as to sums actually paid by Parent and received by him or her for the above time periods.

5. As a further equitable remedy, District shall fund and provide at least four hours of mandatory training to all special education and ADR administrators on the legal requirements and timelines for scheduling and delivering assessment plans and scheduling and holding IEP team meetings to review the assessments. This training shall be completed within 60 school days of the date of this Decision. In addition, District may fund and provide this training to appropriate special education staff. District shall provide written proof of compliance with this training order to Student on request.

6. All of Student's other requests for relief are denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on Issue 1 and Issue 3. District prevailed on Issue 2.

NOTICE OF APPEAL RIGHTS

The parties are advised that they have the right to appeal this decision to a state court of competent jurisdiction. Appeals must be made within 90 days of receipt of this decision. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505, subd. (k).)

Dated: May 6, 2013

/s/

DEIDRE L. JOHNSON

Administrative Law Judge

Office of Administrative Hearings