

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAGUNA BEACH UNIFIED SCHOOL
DISTRICT

OAH Case No. 2016030723

DECISION

Parent filed a due process hearing request on Student's behalf with the Office of Administrative Hearings, State of California, on March 11, 2016, naming Laguna Beach Unified School District. OAH continued the matter for good cause on March 28, 2016.

Administrative Law Judge Laurie Gorsline heard this matter in Laguna Beach, California, on June 14, 15 and 16, 2016, and in Santa Ana, California on June 21 and 22, 2016.

Attorney Timothy Adams represented Student. Father attended all days of hearing, and Mother attended the first day of hearing. Attorney Epiphany Owen represented District. Irene White, District's Director of Special Education and Student Services, attended all days of hearing.

At the close of hearing on June 22, 2016, the ALJ granted a continuance to July 18, 2016, for the parties to file written closing arguments. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES¹

1. Did District deny Student a free appropriate public education by failing to convene an individualized education program team meeting before January 8, 2016?
2. Did District's September 30, 2015 interim IEP deny Student a FAPE by failing to offer an appropriate placement?

SUMMARY OF DECISION

Student met his burden of proof in establishing that the District denied him a FAPE by failing to convene an IEP team meeting before January 8, 2016. Father made a written request for an IEP on September 28, 2015. In its 30-day interim placement offer dated September 30, 2015, District agreed to conduct an IEP team meeting by October 30, 2015. District did not conduct an IEP team meeting until January 8, 2016, significantly impeding Parents' opportunity to participate in the decision making process regarding Student's educational program.

Student failed to meet his burden of demonstrating that District's September 30, 2015 30-day interim IEP denied him a FAPE by failing to offer an appropriate temporary placement. The evidence established that the temporary interim placement offered by District was designed to meet Student's unique needs and was reasonably calculated to

¹ The issues have been renumbered and rephrased for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) Prior to the hearing, Student voluntarily withdrew a third issue as set forth in the Prehearing Conference Order dated May 17, 2016: "Did District's January 8, 2016 IEP offer deny Student a FAPE by failing to provide an appropriate offer of placement?" Accordingly, this decision does not address that issue.

provide Student with some educational benefit in the least restrictive environment for the 30-day period.

FACTUAL FINDINGS

BACKGROUND

1. Student was an eleven-year-old male at the time of the due process hearing. Student lived with Parents during the relevant time period. Student was eligible for special education and related services as a child with a specific learning disability.

2. Student lived with Parents in Connecticut within the Darien Public Schools school district until July 2015. He attended Eagle Hill School, a non-public school, for the third and fourth grades during the 2013-2014 and 2014-2015 school years based on a recommendation by Student's private evaluator, David Gottesfeld. Dr. Gottesfeld's diagnosis of Student included dyslexia, mild dysgraphia and evidence of an expressive language disorder. Parents paid for Student's placement at Eagle Hill and they later received contribution for funding for Eagle Hill through a settlement agreement with Darien.

DARIEN PUBLIC SCHOOLS TRIENNIAL ASSESSMENTS AND THE JANUARY 2015 IEP

3. In preparation for his triennial review, Darien assessed Student in the winter of the 2014-2015 school year in the following areas: speech and language, psychological, academics, and occupational therapy. Student performed in the low average range in intelligence, verbal comprehension, perceptual reasoning, and working memory, and his processing speed abilities were in the borderline range. Overall, Student performed from slightly below average to the average range on tasks targeting a wide range of receptive and expressive language skills. Student also demonstrated some concerns in math fluency, visual-motor integration and grapho-motor skills.

4. On January 30, 2015, Darien held Student's triennial planning and placement team meeting, which was the Connecticut equivalent to an IEP team meeting, and developed a planning and placement team program, which was Darien's equivalent to an IEP.² The Darien members of the IEP team recommended: specialized academic instruction of 6.5 hours of weekly pullout and 7.5 hours of weekly push-in instruction in the areas of reading, writing and math; 2 hours of weekly pullout individual and group speech and language services; and 1 hour per week of pullout individual and group occupational therapy services. Student would participate fully in the general education setting in a public school, except for the time spent in the resource/related service room. Parents did not consent to the January 30, 2015 IEP.

THE PRENTICE SCHOOL IN CALIFORNIA

5. Parents decided to move to California over the 2015 summer, but did not know in which school district they would eventually reside. Parents researched public and private school options in Southern California that used the Orton-Gillingham and Slingerland teaching methods, because Eagle Hill successfully used those methods with Student.

6. On March 9, 2015, Parent contacted Prentice to inquire about their program. Prentice is a private non-profit non-public school certified by the California Department of Education that provides special education programs and services to its students. It is located in the Tustin Unified School District. Prentice is accredited by the Western Association of Schools and Colleges, which is the highest level of accreditation any public or private school can obtain. The Prentice program is designed to return children to public school and its accreditation permits Prentice to transfer students back

² For purposes of this decision, the term "IEP" is used instead of "PPT" in conformity with the terminology in the Individuals with Disabilities Education Act.

to public school. Prentice used research-based techniques to assist students with learning disabilities, focusing on academics. Prentice used the Slingerland instructional methodology, which is an adaptation of the Orton-Gillingham methodology to teach large groups. Both methods use a multi-sensory teaching approach, and all Prentice teachers and instructional assistants were trained to use Slingerland.

7. Gregory Endelman has been Prentice's school principal since 2014. He was a licensed educational psychologist in private practice for ten years. He has master degrees in educational psychology and counseling. He holds credentials in school psychology, counseling and administrative services. At the time of the hearing, he was a candidate for a doctorate degree in education. Prior to working at Prentice, he was the director of special education and assistant principal at Fullerton Joint Union High School District. He also worked for the Orange County Department of Education for three years where he was responsible for the coordination of regional special education programs for local school districts. Dr. Endelman did not personally provide services to students at Prentice except for an occasional psychoeducational evaluation or counseling.

8. During the 2015-2016 school year, 145 students were enrolled at Prentice, placed there by school districts, parents or through settlement agreements. Prentice had 50 faculty and staff for its 145 students, and used a high level of intervention by staff to support its students. Class sizes ranged from 8 to 12 students per credentialed teacher, with collaboration between special education teachers and general education teachers. Prentice's professional services including speech and language services, were usually embedded within the educational program and provided in the classroom. Dr. Endelman testified inconsistently about the student-to-staff ratio in the classroom. He also testified inconsistently as to Prentice's student profiles. He claimed that all students at Prentice had some underlying learning disability and later contradicted that testimony. He also claimed that the typical Prentice student had a combination of both diagnosis and

eligibility, usually falling into the category of learning disabilities, including dyslexia, attention deficit hyperactivity disorder, or disabilities affecting executive functioning. The inconsistencies in Dr. Endelman's testimony affected his credibility.

9. In April 2015, Mother and Student visited the Prentice campus, and on April 29, 2015, Prentice formally offered Student enrollment at Prentice. The Prentice admission committee reviewed Student's January 2015 IEP and Darien's assessments. In Dr. Endelman's opinion, Student was a good fit for admission to Prentice.

10. On May 29, 2015, Parents officially accepted Prentice's enrollment offer for the 2015-2016 school year by signing a commitment letter. Parents decided to have Student start at Prentice at the beginning of the 2015-2016 school year, and signed a contract for him to attend the entire year at Prentice. Student's tuition at Prentice was due a month in advance on the third day of the month beginning on July 3, 2016. Parents began paying the advance monthly tuition of \$2,010 on July 3, 2015, before they moved to California.

11. On August 14, 2015, Parents signed a one-year rental agreement for a house within District. Student moved with family into District on August 23, 2015.

12. On August 25, 2015, Student began attending Prentice. Prentice did not conduct formal assessments of Student because his Darien educational file, including the Darien assessments, provided enough information on his functioning to make formal assessments unnecessary. Student's program consisted of classes in reading, writing, literature, math, math laboratory, social science/history, science, computer, art, social skills, music, and physical education. He was assigned to a fifth grade homeroom class of ten students. He attended a 90-minute literacy class every day in addition to a 45-minute literacy laboratory every other day, which exposed him to grade level text. Literacy blocks typically included four or five students who changed groups every two or three weeks, depending on their assessed reading scores in comprehension, decoding

and fluency. Student attended a 45-minute math class every day in addition to a 45-minute math laboratory every other day, and that class typically had eight students. Student also used a Chromebook that contained programs to assist him in learning. Prentice addressed Student's dysgraphia in two ways: first, built into the Slingerland program was a focus in penmanship and fine motor skill development; and second, assistive technology was used in the classroom, and both his literacy teacher and the assistive technology specialist worked with Student. Student's teachers used Slingerland and Lindamood Bell methodologies to address Student's needs in reading comprehension. Prentice did not implement Student's IEP from Darien, but used its content as "guiding principles," including Student's IEP goals.

STUDENT'S ENROLLMENT IN DISTRICT AND FATHER'S REQUEST FOR AN IEP

13. El Morro Elementary School was Student's District home school. Students who moved into District who had been served in a nonpublic school prior to their enrollment in District were required to enroll in their home school in order to obtain special education services from District. Father was not certain if Prentice was the right fit for Student. He understood Student had to be enrolled in public school in order to have an IEP meeting for Student in order for District to determine what services Student needed, and to enable Father to decide whether to bring Student back to a public school.

14. On September 1, 2015, Father went to El Morro and enrolled Student at District. On the enrollment forms, Parents stated that Student was in special education and had an IEP at Darien. Father did not provide District with a copy of Student's IEP. Father wrote at the top of one of the forms "will send IEP." Father told the receptionist that Student would not be attending El Morro, but that District would be paying for Student to attend another school. The receptionist reported her conversation with Father to District headquarters.

15. Irene White was District's Director of Special Education and Student Services. She holds a master's degree in counseling and credentials in teaching, school psychology and administrative services. She started her career as an elementary school teacher, and worked as a school psychologist for the Westminster School District. She has been employed by District for the past 10 years. She was responsible for District's special education services, management of the IEP process and supervision of the special education staff, including the school psychologist. Her duties included making interim IEP offers to students transferring into District, researching programs and implementing curriculums. She has worked with thousands of children with different types of disabilities.

16. On September 1, 2015, Ms. White's assistant reported to Ms. White that Father had enrolled Student and his brother at El Morro and what Father said to the receptionist. Ms. White directed the school psychologist to contact Student's prior school immediately, in order to obtain his educational records.

17. On September 2 or 3, 2015, the school psychologist told Ms. White that Father had requested that District retain Student and his twin brother in the fourth grade. On September 3, 2015, the school psychologist sent an email to Father scheduling a meeting for September 4, 2015 to discuss possible retention of Student and his brother.

18. On September 4, 2015, the school psychologist and the school principal met at El Morro with Father about retaining Student and his brother. District provided Father with District's notice of procedural safeguards. Ms. White also met with Father for about 15 minutes. Father told Ms. White Student had an IEP at his prior school and that Student would not be at El Morro on the first day of school, September 8, 2015, because he was attending school at Prentice. Father explained that he needed an IEP in place and described Student's program at Eagle Hill. He told Ms. White he wanted District to fund

Student's tuition at Prentice and that Darien had paid for Student's placement outside of the prior school district pursuant to a settlement agreement. Although Father told Ms. White he had no present intention of removing Student from Prentice, he was willing to consider a public school placement if District offered a program he thought was appropriate for Student and would have foregone the tuition payments he had made.

19. Ms. White told Father that District's special education programs could serve Student. Ms. White asked Father several times if he was privately funding Student's placement and if he was interested in learning more about District's El Morro programs, including seeing and speaking with the resource specialists or special education teachers to learn more about what El Morro had to offer. Father did not want to discuss a placement within District. Ms. White did not understand why Father had enrolled Student in El Morro and requested that El Morro retain Student in the fourth grade, while simultaneously stating that Student would attend Prentice. Ms. White explained District's process of offering an interim placement based upon a review of Student's records. She explained that, because Student was new to District, District would obtain Student's educational records from his prior district, review those records and develop an interim placement comparable to what Student was receiving. Ms. White told Father she would share and discuss the interim program with Parents. Ms. White never asked Father to sign any document indicating that he was privately placing Student at Prentice.

20. At hearing, Ms. White claimed that Father never asked for an IEP meeting and that she offered to schedule an IEP meeting, but Father said he was not interested. However, this testimony was elicited through leading questions from District counsel, and when Ms. White was initially asked by Student's counsel what occurred at the September 4, 2015 meeting, she said nothing about offering an IEP meeting to Father. Further, her testimony was inconsistent with the weight of other testimony that

established Father enrolled Student at El Morro for purposes of obtaining an IEP. For these reasons, Ms. White's testimony regarding Father's requests for an IEP during the first days of school was not credible.

21. Father contacted Darien public school to help facilitate the transfer of Student's educational records to District. At some point in September 2015, Darien personnel informed Father that Student's educational records had been sent to District.

22. Between September 4, 2015 and September 16, 2015, Darien provided Student's educational records to District. The documents sent by Darien included Student's assessments, Student's January 2015 IEP, some of the prior IEPs, progress reports from Eagle Hill, communications with Darien, and a letter from Student's private evaluator. District was unable to determine from the records if Parents had consented to any prior IEP.

23. Having heard nothing from the District after September 4, 2015, on September 28, 2015, Father sent an email to the District school psychologist inquiring as to whether District had received Student's IEP from Darien, and how he could start the process of getting an IEP from District. Up to that time, District had not scheduled an IEP team meeting for Student.

DISTRICT'S INTERIM PLACEMENT OFFER

24. Ms. White prepared an interim offer in collaboration with staff, including the resource program specialist. The interim offer was based upon a careful review of the documents sent to District by Darien, including Student's IEP's, assessment information progress reports, as well as Parents' comments in the January 2015 IEP. The information provided by Darien was current and provided a measure of Student's current functioning. Ms. White concluded from her review of Student's educational records that Student could be successful in the general education classroom with specialized supports.

25. On September 30, 2015, Ms. White sent Parents a letter and the following documents: (1) a 30-day interim placement for the period from September 30, 2015 through October 30, 2015; (2) a release of information for District to communicate with Prentice and Tustin Unified School District; (3) District's private school/service plan policy; (4) District's Annual Parent Certification of Intent form which requested that parents check a box choosing between two options indicating whether it was their intent to: (a) enroll, or (b) not enroll, their child in public school; and (5) a copy of parent's procedural safeguards.

26. Ms. White confirmed in her letter that Student had officially enrolled in District and was identified as a student with a disability. She informed Parents that District had an obligation to offer a 30-day interim plan based on Student's most recent IEP, but District had been unable to locate any IEP to which Parents had consented. Ms. White included the 30-day interim offer with her letter in the event Parents wanted Student to attend El Morro. She confirmed that Parent was not interested in any services from District, and informed Parents that Student may be eligible for a service plan from Tustin Unified School District. She also informed Parents that District was not recommending assessments of Student at this time because Student's triennial assessment had been recently completed. She told Parents if at any time in the future they decided to enroll Student in District to contact her, and that any assessment of Student remained District's responsibility. Ms. White informed Parents that "if it is your clear intent" to keep Student enrolled at Prentice, then she would facilitate the service plan process for non-IEP services provided to students enrolled in private schools. She requested that Parents return the Annual Parent Certificate of Intent to maintain a clear record of their intent not to enroll Student at District at that time. Parent never returned the Annual Parent Certificate of Intent to District. Ms. White's letter did not specifically address Father's request for an IEP and disregarded the fact that he had already enrolled

Student in District on September 1, 2015.

27. District's interim placement offer was comparable to the placement and services offered in the Darien January 30, 2015 IEP. District offered Student placement in general education class with specialized academic instruction of 540 minutes weekly consisting of nine hours of weekly resource specialist program pull out support to address goals in reading, math and written language and that the IEP team would adjust that time at the 30-day review meeting to address Student's needs. In addition, until October 30, 2015, Student would receive daily instructional aide support in the general education class for 300 minutes to assist in academics, 120 minutes per week of individual and small group speech and language services, and 60 minutes per week of individual and group occupational therapy services. The interim IEP stated that at the 30-day review meeting: District staff would discuss one-to-one aide support for Student; the speech and language specialist might make additional recommendations; and occupational therapy services would be reviewed with Parents.

28. District designed the interim placement so Student would be in the resource specialist classroom for English language arts and mathematics, and in a general education classroom with an instructional aide for his other classes. The resource specialist supervised the instructional aides. The instructional aides collaborated with the teachers, school psychologist and resource specialist, and were trained to assist and fade back when necessary. In Ms. White's opinion, offering an aide to Student enabled him to participate in general education with general education peers for the majority of his day because it provided him any direct support he needed. Science and social studies were appropriate for Student's participation in general education because those classes were less rigorous than English language arts where Student needed specialized academic instruction.

29. Father disagreed with the interim IEP offer. District never offered Parents

the opportunity to discuss the September 30, 2015 offer with Ms. White before she presented it to Parents. Father felt having an IEP meeting to discuss the offer would have been helpful to him. He did not believe District's offer was appropriate to meet Student's needs because El Morro does not use the same teaching methods as Prentice, and the interim IEP did not identify the teaching method that would be used with Student. Father also thought the El Morro campus had too many students and was unsuitable for Student because of his anxiety. Father believed Student needed assistance the entire day and that Student would get distracted in larger classes. At hearing, Father agreed that the September 30, 2015 interim placement offer was comparable to the January 2015 IEP, but he was uncertain if it was comparable to Student's last approved IEP. Student offered no evidence of the contents of the last IEP Parents approved.

NOTICE OF PRIVATE PLACEMENT AND FATHER'S RENEWED REQUEST FOR AN IEP TEAM MEETING

30. On October 14, 2015, Parent's attorney sent a letter to Ms. White, giving written notice of their disagreement with the interim placement offer and that Parents would enroll Student at Prentice and seek reimbursement from District for the cost of tuition at Prentice as well as the cost of educational services and transportation.

31. On November 10, 2015, District's attorney sent a letter to Student's attorney and Ms. White confirming that Student's attorney had inquired whether District was going to schedule an IEP meeting for Student. The letter also stated that Ms. White was surprised by the request for an IEP meeting because when she met with Father in September 2015, he told her was not interested in any placement in the District and would be unilaterally placing Student at Prentice regardless of any offer made by District. The letter also stated that Father had declined Ms. White's offer to allow Father to observe and or discuss District placement options in an IEP meeting. The letter

requested that Parents notify District if Parents had changed their minds about their unilateral placement of Student and would like to enroll Student in the District, and if so, District would schedule an IEP meeting.

32. On November 12, 2015, Student's attorney sent a letter to District's attorney stating that Parents did not believe that District's September 30, 2015 offer provided Student a FAPE. It also stated that Parents wanted to know if District was going to convene an IEP team meeting, and that District should reconsider its interim offer and decision not to assess Student.

33. On November 30, 2015, District sent a notice to Parents scheduling an IEP team meeting for December 14, 2015 at El Morro. Due to scheduling conflicts, the IEP team meeting was eventually rescheduled for January 8, 2016.

STUDENT'S CONTINUED PLACEMENT AT PRENTICE AFTER THE INTERIM OFFER

34. Student continued to attend school at Prentice for the 2015-2016 school year. He received a report card at the end of his first semester at Prentice. He received A's or B's in all subjects and his most recent reading fluency assessment showed he exceeded his goal by 20 words per minute.

35. Prior to January 8, 2016, Dr. Endelman gave Ms. White a tour of the Prentice campus. Ms. White observed Student for an hour in his English language arts classroom and spoke to his special education teacher. Dr. Endelman told her that District could meet Student's needs. At hearing, Ms. White opined that based on Student's cognitive ability, academic levels, strengths, profile, and social skills, the placement at Prentice was too restrictive for Student, and that he could be served in a public school setting with typical peers.

36. Between October 28, 2015, and the January 8, 2016, Student attended 12 sessions of individual and group speech sessions at Prentice at a cost of \$734. Parent paid tuition at Prentice from October 28, 2015 through January 8, 2016, in the sum of

\$4,757.

THE JANUARY 8, 2016 IEP TEAM MEETING

37. On January 8, 2016, District convened an IEP meeting. All required members of the IEP team were present. Prentice staff reported that Student was functioning at grade level in math but below grade level in reading and written language, that they had been informally implementing the goals from Student's January 30, 2015 IEP, and that such goals were still appropriate. Prentice reported that Student was not receiving occupational therapy services. District offered Student placement and services similar to the 30-day interim placement offer. Parents did not consent to the January 8, 2016 IEP.

STUDENT'S CONTINUED PLACEMENT AT PRENTICE AFTER THE JANUARY 2016 IEP MEETING

38. On February 5, 2016, Prentice special education teacher, Michelle Simon, prepared reports on Student regarding progress on his goals and his present levels of performance. Ms. Simon was Student's special education teacher, and was primarily responsible for teaching him reading. Ms. Simon reported Student met many of his objectives and some of his goals. She also reported that Student had begun working with an occupational therapist at Prentice. Between fall 2015 and winter 2015, Student's reading level had increased from first grade level in comprehension and a third grade level in decoding skills, to a second grade level in comprehension and a fourth grade level in decoding skills. Student had also made improvements in written expression.

39. In April 2015, Prentice issued Student's progress report in reading. Student received a grade of "A" in all areas, including, comprehension, fluency and accuracy. His most recent reading assessment scores were: accuracy 98 percent, fluency 100 percent, and comprehension 90 percent. On tests/quizzes, his score was 288 out of possible 300,

or 96 percent.

40. At the end of his second semester at Prentice, Student received a "C" in math and computers, a "B" in math laboratory, writing, history, science, and music, and an "A" in all of his other classes. Student made academic progress at Prentice.

DR. PERRY PASSARO

41. Dr. Perry Passaro was a licensed and credentialed school psychologist. Parents hired Dr. Passaro to review Student's educational records, District's offer of FAPE and to observe Student at Prentice. Dr. Passaro also observed all of the El Morro fifth grade general education classrooms, and its resource specialist classroom. He also spoke to two of the fifth grade teachers and the resource specialist.

42. On June 7, 2016, Dr. Passaro wrote a letter to Parents opining about District's offer of FAPE. In Dr. Passaro's opinion, District could meet Student's needs. District offered empirically supported academic interventions to meet Student's unique needs. The staff-to-student ratios in his proposed special education classes and the time offered for remediation and intervention were appropriate, and each of these elements was consistent with best practices for pupils with disabilities similar to Student's. Dr. Passaro claimed he had only one concern, which was that Student's inclusion in District's 30-student general education classroom might prove too distracting and the level of instruction perhaps too challenging given Student's disability. However, Dr. Passaro did not testify at the hearing, so these opinions were given little weight.

DR. ENDELMAN'S OPINIONS

43. In the opinion of Dr. Endelman, Prentice's school principal, some aspects of the September 2015 interim placement supported Student and some did not. The specialized academic instruction was "probably" not enough support to address Student's needs and goals. However, he testified inconsistently as to whether Student

could have been integrated into a general education environment. He claimed Student was not ready to be integrated into a general education classroom in any form as of September 30, 2015, or at any time during the 2015-2016 school year. Yet, he described Student's elective classes at Prentice as general education classes taught by a general education teacher, and claimed that general education was appropriate for all but Student's core classes, which he identified as English language arts, math, science and history.

44. Dr. Endelman also opined that for the majority of the school day Student needed a smaller class for his core classes, in literacy specifically, of no more than 12 students, with small group literacy intervention of no more than four students. A larger class size of no more than 20 to 25 students was appropriate for electives, such as art, physical education and music. Dr. Endelman claimed Student would become distracted in a larger class size and that Student needed the structure of a small class and access to professionals at a very small ratio. Dr. Edelman agreed that if Student had an instructional assistant in a class of 30 children, the instructional assistant would be able to redirect him, but inconsistently maintained Student did not need a one-to-one instructional aide. Dr. Endelman claimed Student might feel socially awkward with an aide, opining that Student would resist the support of an instructional assistant but not a teacher's support. He also claimed Student required assistive technology to benefit from his education, but the basis of his opinion was not clearly established.

45. In Dr. Endelman's opinion, occupational therapy might be appropriate outside the classroom but Student needed occupational therapy support in the classroom, and an appropriate approach would be to embed the occupational therapy service in the classroom program instead of pulling Student out. However, he also inconsistently agreed that the offer of occupational therapy services in the September 2015 interim placement was appropriate for Student and admitted that occupational

therapy was used to address dysgraphia.

46. As part of the foundation for his opinions, Dr. Endelman claimed he was very familiar with Student, but he was impeached on this issue several times during his testimony, which affected his overall credibility. He claimed he saw Student on a daily basis, but offered no clear evidence as to where he saw Student, how long he saw Student or other details. Moreover, he was unable to recall details about Student's program. For example, he could not recall if Student received speech or occupational therapy services at Prentice. He was unable to identify Student's teachers in math, history, or written language. He could not identify Student's strengths in reading, written language or math, or his needs in math or grade level in math skills, without looking at Student's file. He claimed Student may have changed reading groups often, but he was unable to articulate whom specifically, besides Ms. Simon, taught him reading or exactly how often Student changed groups. Dr. Endelman was also tentative in his ability to articulate answers to certain questions about Student, including the grade equivalency level of Student's decoding skills during the 2015-2016 school year.

47. Dr. Endelman also opined that the Prentice program was an appropriate placement for Student because it was designed to meet his needs and he made progress. He believed that the Prentice program gave Student the right level of special education and general education supports and the ability to remediate at an intensive level. However, Dr. Endelman admitted he had never been to El Morro, he knew nothing about District's programs or the methods of instruction used at District or how the teachers were trained. He also admitted that there were methodologies other than Slingerland that were appropriate for teaching students with dyslexia or addressing needs in reading.

48. Much of Dr. Endelman's testimony was confusing, convoluted and he often contradicted his own testimony. For example, he claimed that all Prentice classes were

co-taught by both a special education and general education teacher, but later identified Student's science teacher solely as Doug Nason, whom he claimed did not hold a special education credential. He also later claimed that not all students or classes had special education teachers. Further, Ms. Simon was the only fifth grade special education teacher at Prentice, but when Dr. Endelman was asked to identify Student's teachers in math, history, or written language, he was not able to do so. Since Ms. Simon was the subject of a significant portion of Dr. Endelman's testimony, it is not possible that he forgot her name. Further, Dr. Endelman repeatedly went far afield in answering the questions posed to him at hearing, and, at times, appeared to be advocating for Parents rather than answering the questions asked. It appeared that he sometimes gave convoluted answers when he did not want to answer the question or could not answer it in a manner helpful to Student's case against District. Dr. Endelman's inability to answer certain questions posed to him in a clear, cogent, consistent and concise manner negatively affected his credibility.

DISTRICT'S EXPERT WITNESSES' OPINIONS

49. Elizabeth Harris has worked at El Morro since September 2002 as the resource specialist for grades kindergarten through fifth. She has a master's degree in special education and holds credentials in special education. She taught specialized academic instruction and worked mainly with students with learning disabilities, including dyslexia. As part of her duties, she implemented small group instruction across the curriculum for students with IEP's, adapted the curriculum for students with special needs in the resource specialist and general education classrooms, routinely consulted with general education teachers, was the case manager for all her students, supervised the instructional assistants, and evaluated students in the area of academics. Her students were taught in groups of one to four pupils, depending on their needs. She used researched-based programs, including multi-sensory approaches in the classroom,

as well as technology, including smartboards and programs such as Language Live, on classroom computers or on Chromebooks provided to each student.

50. Ms. Harris reviewed Darien's 2015 assessments, the January 2015 IEP, and Student's academic assessment and progress reports from Prentice. She also observed Student at Prentice for an hour in May 2016 during his reading lesson with Ms. Simon. She was qualified to give opinions about Student and his academic performance and needs. In Ms. Harris' opinion, District's interim offer was appropriate for Student to make educational progress. It provided him with the interventions he needed in reading comprehension and reading fluency and gave him the small group instruction he needed. She did not think that placing Student in the science and social studies classes with instructional aide support would be too distracting or too challenging to Student. Children with the same profile as Student did well in general education classes with instructional aide support. District's instructional aides were highly qualified, could have assisted Student in the classroom and helped him remain on task if he was distracted. She thought the Prentice program was too restrictive and did not allow Student to be mainstreamed with general education peers. During her observation, Student was the best reader in the group, was the most appropriate in the group and he did not interfere with his own or other children's learning. Ms. Simon was not using researched-based curriculum or a reading intervention program, the instruction was not individualized, and Student was reading a book beneath his level.

51. Melissa Martinez has been a credentialed general education teacher for 11 years and has taught fifth grade for 10 years. She has been employed by District since 2008. She worked at El Morro as an instructional aide for two years in the resource specialist program taught by Ms. Harris and for five years as a fifth grade teacher, including the 2015-2016 school year. There were 29 students and no instructional aides assigned to her general education class for the 2015-2016 school year. There were four

fifth grades classrooms at El Morro and all were similar. The general education teachers collaborated with the instructional aides and the resource specialist to support students with IEP's. The general education teachers used visuals and other teaching methods geared to students' needs, provided students with Chromebooks containing programs to support students, and were able to accommodate students with specific learning disabilities and diagnosed with dyslexia.

52. Ms. Martinez reviewed Student's educational records, including his triennial assessments and his January 30, 2015 IEP. In her credible opinion, District's September 30, 2015 interim placement was appropriate. District offered the type of support that had successfully assisted students with dyslexia with scores similar to Student's. She agreed that Student needed resource support in reading and math. With his designated instructional aide support, Student would have received the necessary support for focus and comprehension of text in the general education classroom. General education teachers used text-to-speech programs as well as other accommodations in class, so that science and social studies would not have been too challenging for Student to make educational progress.

53. Cari Salkin has a master's degree in education, and holds credentials in special education, as both a reading and resource specialist. She taught special education for 22 years, including classes for children with non-severe learning disabilities in grades four through six, and has worked as a resource specialist. She has also assessed and provided direct services to students with reading disabilities. She was employed as a reading specialist at Saddleback Unified School District and for the past four summers, she taught a reading clinic. Most of the students she has worked with had specific learning disabilities, and at least 100 had dyslexia. She agreed there were many different reading intervention programs other than Slingerland to address needs in writing and that Language Live was an appropriate program to work on reading

comprehension. It complied with common core state standards and was a research-based intervention program based on the research of the chairperson of the International Dyslexia Association. It was adjustable to a student's individual needs and used a multisensory approach.

54. Ms. Salkin reviewed Student's educational records, including the assessments conducted by Darien and the January 2015 IEP. She also reviewed the September 2015 interim placement, Ms. Simon's February 5, 2016 reports, and Dr. Passaro's letter. Ms. Salkin observed Student in his program at Prentice in May 2016 for one hour during English language arts class taught by Ms. Simon. She also observed Ms. Harris' classroom for an hour in June 2015 during language arts and spoke to her about her educational practices and class size. In Ms. Salkin's opinion, District's September 2015 interim placement was appropriate for Student. Ms. Harris used common core state standards and reading interventions based on student's needs, including technology-based programs. In her credible opinion, Ms. Harris was providing her students with a high quality instructional program, which was well supported. Student belonged in class with typical peers for at least part of his day. She did not believe that placing Student in general education science and social studies classes would have been too distracting or challenging for Student, because the instructional aide would have been there to support him, and science and social studies classes are usually very engaging and appropriate to begin mainstreaming students. She opined that the quality of work, access to general education and group size was better at El Morro than at Prentice. Student was much more socially typical than the other children in his class at Prentice, and she would not necessarily recommend Orton-Gillingham methodology at address his needs.

55. Dustin Gowan has been employed for District since 2005, as a resource specialist for ten years, and as a teacher on special assignment. He has a master's

degree in education, with an emphasis in reading research, and a master's degree in education administration. He held an education specialist credential and completed the coursework for his autism authorization. He has worked at the middle school level, co-taught language arts and math, and conducted small group reading intervention. His duties at District included assisting in the implementation of response-to-intervention programs, designing student programs, monitoring student growth, supervising and collaborating with other professional and paraprofessionals on campus in implementing IEP's, and consulting on the implementation of common core state standards in language arts and math. He worked mainly with students with specific learning disabilities, including students with dyslexia and he used wide variety of programs to teach reading.

56. Mr. Gowan reviewed Darien's psychological and academic assessments as well as Student's January 2015 IEP and the academic assessment conducted by Prentice. He opined that District's September 2015 interim placement offer was appropriate for Student. The specialized academic instruction District offered provided Student with an intensive amount of targeted interventions in a small group environment in both literacy and math. Mr. Gowan did not believe a general education placement in science and social studies with an instructional assistant would have been too distracting or challenging for Student if accommodations were implemented. Mr. Gowan explained that instruction could be scaffolded to a rigorous curriculum and District's general education teachers were trained in techniques and strategies, and had the expertise to accommodate a wide range of learners in the general education classroom.

57. Carrie Jenal has a master's degree in communication disorders. She has been a licensed and credentialed speech pathologist for 18 years and worked with children from 3 to 18 years of age in both the private clinic and school settings. She was a District employee and worked at El Morro. Approximately 70 percent of the students

she worked with had a specific learning disability. The speech and language services she provided to pupils with IEP's included collaboration with science and social studies teachers in order to front-load students' vocabularies, so when students went to science and social studies classes, students were already familiar with the vocabulary used in those classes. Ms. Jenal reviewed Student's educational records, including the speech and language, academic and psychological assessments conducted at Darien, and Student's January 2015 IEP that recommended two hours per week of speech and language services. In her opinion, the District's interim placement of two hours per week of speech and language services was appropriate for Student. In the case of an interim placement, she did not think it was necessary to reassess a student recently evaluated, unless she determined the assessments or services were inadequate after working with the student for 30 days.

58. Janette Morey has been a licensed occupational therapist since 1979 and worked exclusively with school districts. She has provided occupational therapy services to children since 1987. Her duties included conducting assessments and she worked with students with various types of disabilities, including dysgraphia. She reviewed the January 2015 occupational therapy assessment conducted by Darien. Student had manual dexterity issues according to the standardized testing. She reviewed Student's January 2015 IEP and District's September 30, 2015 interim placement both of which recommended 60 minutes of occupational therapy per week. In her opinion, the frequency and duration of these services was appropriate for Student.

LEGAL AUTHORITY AND ANALYSIS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.⁴; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and

³ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁴ All references to the Code of Federal Regulations are to the 2006 version.

school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, §§ 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural

protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6), (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Student, as the complaining party, bears the burden of proof.

ISSUE 1: FAILURE TO CONVENE AN IEP TEAM MEETING PRIOR TO JANUARY 8, 2016

5. Student argues that District's failure to convene an IEP team meeting until January 8, 2016 denied him a FAPE. Student contends District was required to convene an IEP team meeting to develop an updated IEP based on programs and services available to District after it made its initial 30-day interim offer and in response to Parent's request for an IEP.

6. District contends because Student was unilaterally placed in private school and Father made it clear he was not interested in any placement in District, he was not entitled to an offer of FAPE. District maintains there was no specific timeline for developing a new IEP for students transferring from out-of-state, and that Student was not legally entitled to an IEP team meeting because Parents did not agree to the interim

30-day offer and never attended El Morro. District argues that it timely held an IEP meeting on January 8, 2016, and Student suffered no deprivation of educational benefits.

Legal Authority

7. Absent a statutory exception, the IDEA mandates that a district offer a FAPE to all students who reside in it. States must ensure that “[a] free appropriate public education is available to all children with disability residing in the State between the ages of 3 and 21.” (20 U.S.C. § 1412(a)(1)(A).) A school district must have an IEP in place at the beginning of each school year for each child with exceptional needs residing within the district. (Ed. Code, § 56344, subd. (c); 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).) Developing an IEP is a necessary predicate to offering a FAPE, and the obligation to offer a FAPE also includes an obligation to develop an IEP. (Cf. *Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 238–39 [129 S.Ct. 2484, 174 L.Ed.2d 168] (“[W]hen a child requires special-education services, a school district's failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP.”).)

8. In order to provide a FAPE, a school district must develop an IEP that is reasonably calculated to provide an eligible disabled child with an educational benefit. (*Rowley, supra*, 458 U.S. at pp. 206-207.) The district must review the child's IEP at least once a year and make revisions if necessary. (20 U.S.C. § 1414(d)(4); Ed. Code, § 56341.1, subd. (d).) A parent’s failure to cooperate in the development of the IEP does not negate this duty. (*Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055; 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a) (*Anchorage*) [School districts “...cannot excuse their failure to satisfy the IDEA’s procedural requirements by blaming the parents.” (689 F.3d at p. 1055, citing *W.B. v. Board of Trustees of Target Range School Dist. No. 23, etc.* (9th Cir. 1992) 960 F.2d 1479, 1485, *superseded in part by statute on other grounds*].)

9. An IEP team meeting requested by a parent shall be held within 30 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent's written request. (Ed. Code, §§ 56343.5; 56043, subd. (l).) Each public agency must ensure that a meeting to develop an IEP for a child is conducted within 30 days of the determination that the child needs special related services. (34 C.F.R 300.323(c)(1).) While the IDEA generally requires completion of an evaluation and formulation of an IEP prior to placing and providing services to a student with a disability, there may be some circumstances in which a student may receive services under an interim IEP before the normal process is completed. (*Letter to Saperstone* (OSEP 1994) 21 IDELR 1127; and *Letter to Boney* (OSEP 1991) 18 IDELR 537 (Part B of the IDEA neither requires nor forbids the use of interim IEP's for children with disabilities.))

10. The failure to timely hold an IEP team meeting is a procedural violation. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2) and (j); *W.G., et al. v. Board of Trustees of Target Range School District, supra*, 960 F.2d 1479, 1484 ["...procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].)

11. The IDEA and the regulations promulgated pursuant to the IDEA guarantee that the parents of each child with a disability participate in any group that makes decisions on the educational placement of their child. It emphasizes the participation of the parents in developing jointly with the school district the child's educational program and assessing its effectiveness. (20 U.S.C. § 1415(a); see also 20

U.S.C. § 1400(d)(1)(B) (rights of parents protected); 20 U.S.C. 1414(c)(1)(B) (input from parents specified); 20 U.S.C § 1414(a)(1)(D) (parental consent specified); 20 U.S.C. § 1415(b) (opportunity for parents to examine the record specified); and 20 U.S.C. § 1414(d)(2)(C)(i) and (ii)(requiring school district to consult with parents of students transferring into district in the development of a comparable interim IEP).)

12. “Parentally-placed private school children with disabilities” is a defined term that means children with disabilities enrolled by their parents in private schools or facilities. (Ed. Code, § 56170; 34 C.F.R. § 300.130.) No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (Ed. Code, § 56174.5; 34 C.F.R. § 300.137(a).) Instead, parents of a child in private school have two options: (1) accept the offer of a FAPE and enroll their student in the public school, or (2) keep their child in private school and receive “proportional share” services, if any, provided to the student pursuant to title 20 United States Code § 1412(a)(10) and title 34 Code of Federal Regulations §§ 300.130–300.144. (*District of Columbia v. Wolfire* (D.D.C. 2014) 10 F.Supp.3d 89, 92.)

13. Developing an IEP to inform a child’s parents about the services that could be offered in an effort to provide that student with a FAPE is not the same thing as requiring the local educational agency to provide the services described in the IEP. As a result, the development of an IEP does not implicate the limitations of Title 20 United States Code section 1412(a)(10) or title 34 Code of Federal Regulations section 300.147(a). (*Id.*)

14. If Parents of a private school child request an IEP for their child, the local educational agency is required to honor that request. (*Id.* at pp. 93-94; *District of Columbia v. Vinyard* (D.D.C. 2013) 971 F.Supp.2d 103, 111; *Letter to Eig* (OSEP 2009) 52 IDELR 136 (local educational agency where student resides cannot refuse to conduct the

evaluation and determine the child's eligibility for FAPE because the child attends a private school in another district.) Parents are entitled to place student in private school even though district of residence had not previously denied student a FAPE, and also seek a FAPE from district in which parents continue to reside. (*J.S. v. Scarsdale Union Free School* (S.D.N.Y. 2011) 826 F.Supp.2d 635, 665-668 ("a district-of residence's obligations do not simply end because a child has been privately placed elsewhere, as the District argues—rather, the IDEA's obligations may be shared."); 71 Fed. Reg. 46593 (2006); *Board of Educ. of Evanston-Skokie Community Consol. School Dist. 65 v. Risen* (N.D. Ill., June 25, 2013, No. 12 C 5073) 2013 WL 3224439, at *12-14; *District of Columbia v. Oliver* (D.D.C., Feb. 21, 2014, No. CV 13-00215 BAH/DAR) 2014 WL 686860, at *4 (Districts have no obligation to *provide* FAPE to parentally placed private school students with disabilities; but they do have an obligation to make FAPE *available* and cannot fulfill this duty without developing an IEP).)

15. An offer of placement must be made to a unilaterally placed student even if the district strongly believes that the student is not coming back to the district, or parents have indicated that they will not be pursuing services from the district. The requirement of a formal, written offer should be enforced rigorously and provides parents with an opportunity to accept or reject the placement offer. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526, *cert. den.*, 513 U.S. 965 (1994).) The IDEA does not make a district's duties contingent on parental cooperation with, or acquiescence in, the district's preferred course of action. (*Anchorage, supra*, 689 F.3d at p. 1055.) Re-enrollment in public school is not required to receive an IEP. (See *Woods v. Northport Public School* (6th Cir. 2012) 487 Fed. Appx. 968, 979-980 ["It was inappropriate to require [student] to re-enroll in public school in order to receive an amended IEP" ...]... "It is residency, rather than enrollment, that triggers a district's IDEA obligations."); Cf. *N.B. v. State of Hawaii Department of Educ.* (D. Hawaii, July 21, 2014,

No. CIV 13–00439 LEK–BMK) 2014 WL 3663452 (A district’s obligation to implement an interstate transfer student’s IEP begins when the student enrolls in public school).)

16. Even when parents have already decided to place their child in private school, the school district is not excused from obtaining their participation in the IEP process. In *D.B. ex rel. Roberts v. Santa Monica-Malibu Unified School Dist.* (9th Cir. 2015) 606 Fed. Appx. 359, 360–361, the school district held an IEP team meeting to determine student’s placement and services for the following school year without parents, who were unavailable and had already decided student would not be attending a district school. The court found that the failure to include parents in the IEP team meeting was a procedural violation that denied the Student a FAPE in the following school year. [“Furthermore, even if D.B.’s parents already had decided to enroll D.B. at the Westview School, their exclusion was not permissible. See *Anchorage Sch. Dist v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055 (‘[T]he IDEA, its implementing regulations, and our case law all emphasize the importance of parental involvement and advocacy, even when the parents’ preferences do not align with those of the educational agency.’).” *D.B. ex rel. Roberts, supra*, 606 Fed. Appx. 359 at p. 361.]

17. Parents of a child placed in private school with an existing IEP, or found eligible for special education while in private school, may choose to revoke consent in writing for the provision of special education and related services to their child. (Ed. Code, § 56346, subd. (d).) If the parents do not revoke consent in writing, the school district must continue to periodically evaluate the student’s special education needs, either on its own initiative or at the request of the student’s parents or teacher. (20 U.S.C. §§ 1412(a)(3)(A) and (a)(4), 1414(a); *Department of Educ., State of Hawaii v. M.F. ex rel. R.F.*, (D. Hawaii 2011) 840 F.Supp.2d 1214, 1228–1230, *clarified on denial of reconsideration*, (D. Hawaii, Feb. 28, 2012, No. CIV 11-00047 JMS) 2012 WL 639141 [rejecting public agency’s argument that the student’s disenrollment from public

education, without a written revocation of consent to special education services, excused the agency from preparing further IEP's until the parents subsequently requested services].) If parents make clear their intention to enroll their child at private school and that they are not interested in a public school program or placement for their child, the public agency need not develop an IEP for the child. (*Memorandum to Chief State School Officers* (OSEP, May 4, 2000) 34 IDELR 263.)

18. To facilitate the transition for an individual with exceptional needs who transfers from another school district, the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil's records, including the IEP's and supporting documents and any other records relating to the provision of special education and related services to the pupil, from which the pupil was enrolled. (Ed. Code, § 56325 (b)(1).)

19. When a student with exceptional needs transfers from an educational agency located outside California to a district within California, within the same academic year, the new district shall provide the pupil with a FAPE, including services "comparable" to those described in the previously approved IEP, in consultation with the parents, until the new district conducts an assessment pursuant to paragraph (1) of subdivision (a) of Section 1414 of Title 20 of the United States Code, if determined to be necessary by the local educational agency, and develops a new IEP. (Ed. Code, § 56325, subd.(a)(3); 20 U.S.C. § 1414(d)(2)(C)(i)(II); 34 C.F.R., § 300.323(f).)

20. The IDEA, its implementing regulations, and the Education Code, are silent on the specific procedure by which a district is to provide FAPE to a child with a disability who moves into the district during the summer. In its Comments to 2006 IDEA Regulations, the United States Department of Education addressed whether it needed to clarify the regulations regarding the responsibilities of a new school district for a child with a disability who transferred during summer. The United States Department of

Education declined to change the regulations, reasoning that the rule requiring all school districts to have an IEP in place for each eligible child at the beginning of the school year applied, such that the new district could either adopt the prior IEP or develop a one. (71 Fed. Reg. 46682 (2006).) When a student transfers to a new school district between school years, the new district is not required to implement a former district's IEP or give the student services that are "comparable" to those offered by a former district; it need only develop and implement an IEP reasonably calculated to provide the student a FAPE based on the information available to the district. (See, *Clovis Unified School Dist.* (2009) Cal. Offc. Admin Hrngs. Case No. 2008110569; see also, *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrman v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041(*Fuhrman*).) The new public agency also has the option of adopting the IEP developed for the child by the previous public agency in the former district. (*Questions and Answers On Individualized Education Programs, Evaluations, and Revaluations* (OSERS 09/01/11) 111 LRP 63322; see also, *Eagle Mountain-Saginaw Indep. School Dist.* (SEA TX 2012) 60 IDELR 178.)

21. Neither Part B of the IDEA nor the regulations implementing Part B of the IDEA establish timelines for the new public agency to adopt the child's IEP from the previous public agency or to develop and implement a new IEP. However, consistent with title 34 Code of Federal Regulations sections 300.323(e) and (f), the new public agency must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services. (*Questions and Answers On Individualized Education Programs, Evaluations, and Revaluations, supra*, 111 LRP 63322.) The IDEA does not state when the receiving district must begin providing the student FAPE, but the district must begin to do so as soon as possible based on the circumstances. (See *Christina School District* (SEA DE 2010) 54

IDELR 125; *Letter to State Directors of Special Education* (OSEP 2013) 61 IDELR 202 (Whenever possible, school districts should attempt to complete evaluations and eligibility determinations for highly mobile children on an expedited time frame so they can receive a FAPE); *N.B. v. State of Hawaii Department of Educ., supra*, 2014 WL 3663452 (enrollment triggers the obligation to provide a FAPE to a transfer student).)

22. When parents and district disagree on the appropriate placement for a transferring student, providing services in accordance with the Student's previously implemented IEP pending further assessments effectuates the statute's purpose of minimizing disruption to the student while the parents and the receiving school district resolve disagreements about proper placement. (*A.M. ex rel. Marshall v. Monrovia Unified School Dist.* (9th Cir. 2010) 627 F.3d 773, 778-779.)

Analysis

23. Student proved by a preponderance of evidence that District denied Student a FAPE by failing to convene an IEP team meeting before January 8, 2016. District knew that Student lived within its boundaries. On September 1, 2015, Father enrolled Student in his home school and informed District that Student had been eligible for special education in his prior school district, and that he had an IEP. On September 4, 2015, Father explained to Ms. White why Student needed an IEP, and Ms. White explained the interim IEP process and told Father that District would develop an interim IEP for Student, which she would discuss with Parents. Father followed up his meeting with a written request for an IEP on September 28, 2015. Ms. White's testimony that Father did not want an IEP team meeting was not credible.

24. Student transferred from Darien to District during the summer, rather than "within the same academic year." Thus, the rights of transferring students as set forth in Education Code § 56325, subdivision (a)(3), Title 20 United States Code section 1414(d)(2)(C)(i)(II) and title 34 Code of Federal Regulations section 300.323(f) did not

specifically apply to Student. It is nevertheless clear, as reflected in the Comments to 2006 IDEA Regulations, that the IDEA, (20 U.S.C. § 1414(d)(2)(A)), requires each school district to have an IEP in place for a child at the beginning of the school year.

25. District was therefore required to begin the process of either developing an IEP reasonably calculated to provide Student a FAPE based on the information available to District, or adopting Darien's IEP, which necessarily included an IEP team meeting with all required members of the IEP team. While a child privately placed does not have the right to *receive* some or all of the special education or related services that a child would receive if enrolled in public school, District continued to have the obligation to *offer* Student a FAPE when requested by Father, which it did not do until January 8, 2016.

26. District's arguments that it was not required to develop an IEP for Student because he never attended El Morro and his Parents never signed the interim offer were not convincing and unsupported by any persuasive legal authority. The undisputed evidence established that 1) Student was a District resident as of August 23, 2015 and 2) he enrolled in District on September 1, 2015. Those facts triggered District's duty to develop an offer of FAPE and hold an IEP team meeting. Parents had no obligation to sign an interim offer of placement as a condition for convening an IEP team meeting for Student. The fact that Student was attending Prentice did not relieve District of its obligations to develop an IEP and convene an IEP team meeting to inform Parents about the placement and services that could be offered by District.

27. District's claim that it was relieved of the obligation for providing Student with an IEP team meeting because Father made it clear that he did not want a placement from District was also not convincing. Father exhibited an interest in a public school placement when he enrolled Student in District, facilitated the process of having Student's educational records sent from Darien to District, sought to have District retain

Student in fourth grade, and requested an IEP from District. Further, he never returned the Annual Parent Certificate of Intent indicating that it was his intent to privately place Student, nor did he otherwise give notice in writing that he did not want Student to receive special education and related services from District. Although Father orally told Ms. White he was not interested in any placement within District, Ms. White admitted at hearing she was confused by Father's conduct. Regardless of Father's statements, Ms. White's own conduct demonstrated that Father's intent to reject a District placement was not clearly stated nor understood. Specifically, Ms. White ended the September 4, 2015 meeting by telling Father that District would obtain and review Student's educational records, and create an interim placement comparable to what Student was receiving in Connecticut, which she would discuss with him. Further, in her letter to Parents dated September 30, 2015, Ms. White specifically communicated that she was not certain about Parents' intent to keep Student enrolled at Prentice when she stated "*if it is your clear intent to keep [Student] enrolled [at Prentice]...*" (emphasis added). Ms. White's letter was further evidence that District's duty to offer Student a FAPE was still in place because District did not have confirmation that Student was being privately placed.

28. District could have and should have scheduled an IEP team meeting for Student after it completed its review of Student's records from Darien at the end of September 2015. District began the process necessary to develop an IEP for Student in a reasonable fashion. It promptly took steps to obtain Student's educational records from Darien and obtained the records by September 16, 2015. Ms. White carefully reviewed Student's educational records in collaboration with staff, but was unable to determine the last Parent-approved IEP. Based on the information in the files, District determined that the information sent by Darien provided a measure of Student's current functioning, and that assessments were unnecessary.

29. However, instead of contacting Parents to obtain their input, on September 30, 2015, District unilaterally developed a 30-day interim placement offer comparable to what Darien offered in the January 30, 2015 IEP. Although it was not unreasonable for District to propose an interim placement based upon the information available to it and then propose an IEP team meeting within 30 days to review the interim offer, District failed to follow through on convening the 30-day review meeting promised in the interim placement. District unreasonably excluded Parents from the IEP process by not timely holding an IEP meeting requested by Father and as promised in the interim IEP. As a practical matter, holding an IEP team meeting would have allowed the parties to discuss the placement issues, including the continuum of placement options, clarified Father's intentions, and provided Student with a formal offer of FAPE from District after input from all members of the IEP team. At that point, Parents would have been in a position to decide whether to bring Student back to public school or keep him at Prentice.

30. District argues there was no denial of FAPE by failing to hold an IEP team meeting because Student suffered no deprivation of educational benefits. District's argument is without merit because the IDEA expressly provides that significantly impeding a parent's right to participate in placement decisions is a denial of FAPE. Because District staff had thoroughly reviewed Student's file by September 30, 2015, and had decided not to conduct assessments, it should have arranged for an IEP team meeting to occur by no later than October 28, 2015, thirty days after Father's written request for an IEP and within 28 days of the presentation of its interim offer to Parents. District's failure to do so was a significant procedural violation of the IDEA depriving parents of the opportunity for meaningful participation in the development of Student's educational program, and denied Student a FAPE. Student's remedies are discussed below.

ISSUE 2: THE SEPTEMBER 30, 2015 INTERIM OFFER OF PLACEMENT

31. Student contends District's interim offer of placement was inappropriate because it was untimely, based on Darien's January 2015 IEP to which Parents never consented, and was not calculated to address Student's unique needs. Student also claims that a general education setting with an aide was not appropriate for Student, that he required a smaller environment to make progress, and that Student required assistive technology to benefit from his education. Student argues that because the Prentice program was designed to meet Student's needs and Student made progress there, it was the appropriate placement for Student.

32. District contends Student was not entitled to FAPE because Parents privately placed him at Prentice. District maintains that the September 30, 2015 interim offer was comparable to Student's January 2015 IEP, and that it offered Student a FAPE.

33. Legal conclusions 7 through 30 are incorporated by reference.

Legal Authority

34. To determine whether a school district offered a student a FAPE the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

35. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.) An IEP is "a snapshot, not a retrospective." (*Id.*, citing *Fuhrmann, supra*, 993 F.2d at p. 1041.) It must

be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p. 1149.)

36. The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School 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.)

37. A school district must deliver each child's FAPE in the least restrictive educational environment appropriate to the needs of the child. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2).)

38. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the non-academic benefits of such placement"; 3) "the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H., etc.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Bd. of Educ.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also

Clyde K. v. Puyallup School Dist., No. 3 (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's syndrome].) Whether education in the regular classroom, with supplemental aids and services, can be achieved satisfactorily is an individualized, fact-specific inquiry. (*Daniel R.R., supra*, 874 F.2d at p. 1048.) If it is determined that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Id.* at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

39. California's implementing regulations define a "specific educational placement" as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs." (Cal. Code Regs., tit. 5, § 3042, subd. (a).) A school district "must ensure that [t]he child's placement...[i]s as close as possible to the child's home." (34 C.F.R. § 300.116(b)(3).) The school district "must ensure that...[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." (34 C.F.R. § 300.116(c).)

40. The methodology used to implement an IEP is left to the school district's discretion so long as it meets a child's needs and is reasonably calculated to provide

some educational benefit to the child. (See *Rowley, supra*, 458 U.S. at pp. 207-208; *Adams, supra*, 195 F.3d 1141, 1149; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-1232.) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. at pp. 207-208.)

Analysis

41. The preponderance of the evidence established that District's interim placement offer was designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit under *Rowley* in the least restrictive environment.

42. Under *Rachel H.*, the analysis of whether an offer of placement is in the least restrictive environment begins with evaluating whether or not a general education setting is appropriate for Student. Here, District and Parents agreed that Student could not be appropriately educated in a general education class full-time. The evidence established that placing Student in a full-time general education setting was inappropriate because Student had needs affecting him in the areas of reading, spelling and math that were best addressed by a special education teacher.

43. Student failed to prove that District's proposal to mainstream Student was inappropriate. Ms. White credibly testified that after reviewing Student's educational records with District staff, District determined that Student required specialized academic instruction in the resource specialist classroom in math and English language arts, but that Student could be successful in the general education classroom with the support of an instructional aide. The instructional aides were supervised by the resource specialist, collaborated with the teachers, school psychologist and resource specialist, and were trained to assist and fade back when necessary. Ms. White's testimony was

credibly corroborated by Ms. Harris, Ms. Martinez and Ms. Salkin, all of whom reviewed Student's educational files and had extensive teaching experience in the classroom. Both Ms. Harris and Ms. Salkin had broad experience working with children with specific learning disabilities, specifically dyslexia. Ms. Martinez had been an instructional aide who had spent two years working with Ms. Harris and was persuasive when she testified that Student would have received the necessary support for focus and comprehension of text to make progress in the general education classroom. District witnesses also established that science and social studies were appropriate classes for mainstreaming Student. Both Ms. Harris and Ms. Martinez believably explained that children with a profile similar to Student's did well in general education classes with instructional aide support. Furthermore, the speech and language services District offered included front-loading the vocabulary used in science and social studies which would have further supported him in those classes. Mr. Gowan explained that instruction in the general education classroom could have been scaffolded, and that District's general education teachers were trained in techniques and strategies, and had the expertise to accommodate a wide range of learners in the general education classroom.

44. The evidence offered by Student on the issue of mainstreaming was not persuasive. Although Father believed Student needed assistance the entire school day, he agreed that he was not a professional educator and the basis of Father's opinion was unclear. Dr. Passaro's opinions were equivocal and he could not be examined about them because he did not testify at hearing. Furthermore, District's witnesses credibly disagreed with Dr. Passaro's written statements.

45. Dr. Endelman's testimony on mainstreaming was also unconvincing, inconsistent, confusing and convoluted. For example, he claimed that Student was not ready for transition into general education in any form, but later claimed general education was appropriate for all but Student's core classes and referred to Student's

elective classes at Prentice as general education classes taught by a general education teacher. He opined that Student would become distracted in a larger general education class, but he admitted an instructional assistant would have been able to redirect him. He claimed that Student needed access to professionals at a very small ratio, but opined that Student did not need a one-to-one aide in a general education class. Student did not establish a credible basis for Dr. Endelman's testimony that Student would resist the support of an instructional assistant but not a teacher's support. Dr. Endelman's testimony regarding his claimed familiarity with Student was not persuasive. Dr. Endelman's testimony failed to establish that the staffing ratios at District would have denied Student an opportunity to make educational progress. Dr. Endelman also told Ms. White that District could meet Student's needs.

46. As to the other *Rachel H.* factors, the weight of credible evidence established that the non-academic benefits of mainstreaming Student supported the placement offered by District. The September 30, 2015 offer not only provided Student with the interventions he needed to make academic progress, but allowed him the opportunity for exposure to his general education peers. Student offered no persuasive evidence that he would have had an effect on his teachers or the children in regular classes. Neither party presented evidence on the cost of mainstreaming Student. Weighing the evidence on the *Rachel H.* factors, Student's placement full-time in a general education class was not appropriate. District's interim placement offer provided exposure to typical peers to the maximum extent appropriate.

47. The preponderance of evidence established that the interim placement offer was designed to meet Student's unique needs then known to District. It was reasonably calculated to provide Student with some educational benefit in the least restrictive environment. District's offer was only meant to provide Student with support for 30 days, until a full-IEP team could be convened. It provided Student with intensive

targeted interventions in literacy and math along with the small group instruction he needed, while giving Student opportunities to socialize with his general education peers. District utilized visuals, research-based programs, and other teaching methods geared to students' needs, including multi-sensory approaches in the classroom. District also used technology, including smartboards, Chromebooks and classroom computers, as well as technology-based programs, to assist students in their learning. District's offer of occupational therapy and speech and language services were appropriate. All of District's witnesses opined that the services offered were appropriate, including occupational therapist Ms. Morey, and speech pathologist, Ms. Jenal. The only contrary evidence came from Dr. Endelman, and he later contradicted his testimony.

48. Although Dr. Endelman claimed that Student required assistive technology to benefit from his education, Student offered no evidence that Dr. Endelman had conducted an assistive technology assessment, was an assistive technology expert, or provided assistive technology services to students. Technology was embedded in the program District offered to Student as part of his interim placement. Student failed to establish that he required something more for a FAPE.

49. District was not required to identify its methodologies in the interim placement offer or utilize the Orton-Gillingham or Slingerland methodologies in order to offer Student a FAPE. As a reading specialist with 22 years of experience teaching special education, Ms. Salkin credibility testified that there were many reading intervention programs which could address a student's needs in reading. For example, Ms. Salkin explained Language Live, a program used by District, was a recognized program for addressing reading needs that was based on the research of the chairperson of the International Dyslexia Association. Dr. Endelman agreed that Prentice used approaches other than Slingerland and that various methodologies existed that were appropriate for teaching students with dyslexia or addressing a student's needs in

reading. District established that it offered an appropriate placement and services and used appropriate methodologies to address Student's unique needs.

50. District was also not required, as Student argued, to offer as an interim placement a program "comparable" to Student's last approved IEP. As discussed in Issue 1 above, because Student transferred to District after the end of the prior school year, and before the beginning of the 2015-2016 school year, District was only required to develop an IEP reasonably calculated to provide the student a FAPE based on the information available to District at the time, regardless of whether or not it was comparable to Student's last approved IEP. Moreover, Student did not offer the last approved IEP into evidence at hearing.

51. Student did not prove that District's interim offer was untimely. District acted promptly in developing an interim offer, effectuating the statute's purpose of minimizing disruption to the student while the parents and the receiving school district resolve disagreements about proper placement. District promptly sought and obtained Student's records. Student failed to establish that the 14-day delay between District's receipt of Student's records and the September 30, 2015 interim offer was unreasonable. District acted timely and reasonably in processing all of the information it acquired.

52. In sum, Student failed to prove that District's September 30, 2015 interim IEP denied him a FAPE by failing to offer an appropriate placement. District's 30-day interim offer of placement, with its combination of general education placement with an instructional aide, resource specialist support, and services in the areas of speech and occupational therapy was designed to meet Student's unique needs, and would have provided him with the specialized support necessary for him to make progress until an IEP team meeting could be convened. The placement offer was reasonably calculated to provide Student some educational benefit under *Rowley* in the least restrictive environment.

REMEDIES

1. Student prevailed on Issue 1 by proving that District failed to timely hold an IEP team meeting prior to January 8, 2016, thereby significantly impeding Parents' opportunity to participate in the decision making process. As a remedy, Student requested reimbursement for the cost of: (1) tuition at Prentice since Student began attending Prentice at a rate of \$2,010 per month through May 31, 2016; (2) speech and language services, occupational therapy, and Chromebook which totaled \$3,620 through May 31, 2016; (3) an order that District fund Prentice until such time as District provides a FAPE; and (4) an order that District provide transportation between the family home and Prentice. District argues that Student is not entitled to reimbursement because Prentice was not an appropriate placement, and Student did not provide the requisite 10-day notice prior to placing Student at Prentice.

2. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.*, *supra*, 557 U.S. 230, 244, n. 11.) Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington*, *supra*, 471 U.S. at pp. 369-371.) When school district 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. ALJ's have broad latitude to fashion equitable remedies appropriate for a denial of a FAPE. (*Id.* at 369-370; *Forest Grove School Dist. v. T.A.*,

supra, 557 U.S. at 244, n. 11.)

3. Courts may still require a district to provide tuition reimbursement even if the Student never received public education. The receipt of special education and related services through the public school system is not a prerequisite for reimbursement. As such, the mere failure to make FAPE available to a student with a disability can expose a district to a claim for tuition reimbursement. However, reimbursement also will depend on whether the private placement is appropriate, and whether there are any equitable considerations, such as a lack of proper notice, that would bar reimbursement. (*Forest Grove School Dist. v. T.A.*, *supra*, 557 U.S. at pp. 233, 238-240; 71 Fed. Reg. 46599 (2006).) The parents of a child with a disability need only have requested the provision of special education and related services in order to qualify for tuition reimbursement. (*Frank G. v. Board of Educ. of Hyde Park Cent. School Dist.* (2d Cir. 2006) 459 F.3d 356, 376, *cert. den.*, 552 U.S. 985 (2007); See *Letter to Luger* (OSEP 1999) 33 IDELR 126.)

4. The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent School Dist. v. State Bd. of Educ.* (5th Cir. 1986) 790 F.2d 1153, 1161.) Although the parents' placement need not be a "state approved" placement, it still must meet certain basic requirements of the IDEA, such as the requirement that the placement address the child's needs and provide him educational benefit. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13-16, 50 [114 S.Ct. 361] (*Carter*)). Parents may receive reimbursement for the unilateral placement if it is appropriate. (34 C.F.R. § 300.148(c); Ed. Code, § 56175; *Carter*, *supra*, 510 U.S. at pp. 15-16.) The appropriateness of the private placement is governed by equitable considerations. (*Ibid.*) The Ninth Circuit has held that to qualify for reimbursement under the IDEA, parents need not show that a

private placement furnishes every special education service necessary to maximize their child's potential. (*C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3d 1155, 1159.)

5. Reimbursement may be reduced or denied in a variety of circumstances, including whether a parent acted reasonably with respect to the unilateral private placement. (20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); Ed. Code, § 56176.)

6. Father sought an IEP from District by enrolling Student at District and requesting an IEP from District. After obtaining Student's records, on September 30, 2015 District made an interim IEP offer without obtaining any input from Parents and disregarding Parent's request for an IEP team meeting. On October 14, 2015, Parents gave District a 10-day notice that Parents disagreed with District's offer and that they would place Student at Prentice and seek reimbursement from District for the cost of tuition at Prentice as well as the cost of educational services and transportation expenses. On January 8, 2016, District offered Student an IEP, the appropriateness of which is no longer an issue in this case. Parents paid Prentice \$2,010 per month in tuition and \$734 for speech and language services for the period between October 28, 2015 and January 8, 2016.

7. Prentice was a private non-public school certified by the State Department of Education. Although Student did not receive formal services through an IEP, Prentice used Student's IEP from Darien as a guide and informally implemented his January 2015 IEP goals. While at Prentice Student received instruction using evidence-based methodology for addressing the needs of students with specific learning disabilities and Prentice was addressing Student's unique needs related to his dyslexia and dysgraphia. Student's report cards, progress reports and assessment results demonstrated that he made educational progress while at Prentice.

8. Despite the inconsistencies in Dr. Endelman's testimony, the weight of

evidence sufficiently established that Prentice met Student's needs and provided him educational benefit for the time period in question. Although some of District's witnesses conducted observations of Student at Prentice, nothing the witnesses saw in those observations was sufficient to prove that Student was not achieving educational benefit or that Prentice was not meeting his needs.

9. District's failure to timely hold an IEP team meeting significantly impeded Parents' opportunity to participate in the decision making process. Student established that District was required to convene an IEP team meeting by no later than October 28, 2015, but did not convene an IEP meeting until January 8, 2016. On November 30, 2015, District offered to convene an IEP team meeting on December 14, 2015, and then later rescheduled it for January 8, 2016. However, the evidence did not establish this delay was the result of unreasonable conduct on the part of Parents. Parents are not entitled to any reimbursement for Prentice tuition or services provided to Student prior to the effective date of their October 14, 2015 10-day notice, *i.e.*, October 28, 2015, nor after the IEP meeting was ultimately held, as discussed below. Accordingly, Student is entitled to reimbursement for the cost of tuition for the time Student attended Prentice from October 28, 2015 through January 8, 2016 in the sum of \$4,757.

10. Student is also entitled to reimbursement for the 12 sessions of individual and group speech sessions attended by Student between October 28, 2015 and January 8, 2016 in the sum of \$734. Although Student's closing brief requests reimbursement for Student's Chromebook, Father stated at hearing that he was not seeking reimbursement for Student's Chromebook. Although Student's closing brief also requests reimbursement for transportation, the complaint did not request transportation reimbursement and Student presented no evidence at hearing regarding transportation. Accordingly, Parents' request for transportation reimbursement is denied.

11. Student did not prove he was entitled to reimbursement for the period of

time he attended Prentice after the January 8, 2016 IEP. Prior to the hearing, Student withdrew his FAPE challenge to District's January 8, 2016 IEP offer. Having withdrawn his challenge to the January 8, 2016 FAPE offer, Student failed to establish he is entitled to reimbursement of any kind after January 8, 2016, for funding at Prentice after January 8, 2016, or for any of the other remedies sought as a result of Student's attendance at Prentice after January 8, 2016.

12. Finally, District was required to hold an IEP team meeting prior to January 8, 2016 and it failed to convene that meeting. The evidence established that District staff were confused over their duties under the IDEA to a transfer student such as Student. Therefore, Student is entitled to an order that District provide five hours of special education training to its entire administrative staff from an independent agency or institution not affiliated with District, which specializes in providing training to school districts. The training shall include instruction on school district obligations to students transferring into a new district, including IEP meeting requirements, and shall be completed by no later than June 30, 2017.

ORDER

1. Within 45 days from the date of this order, District shall reimburse Parents for the cost of attending Prentice from October 28, 2015 through January 8, 2016 in the sum of \$4,757 and for individual and group speech sessions attended by Student between October 28, 2015 and January 8, 2016 in the sum of \$734;

2. District shall provide five hours of special education training from an independent institution or agency not affiliated with District and which specializes in special education training to school districts to all of its administrative staff;

3. The special education training shall include instruction on the obligations of school districts to students transferring into a new district, including IEP meeting requirements;

4. The training shall be completed by no later than June 30, 2017; and
5. All other relief sought by Student is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on *Issue 1* and District prevailed on *Issue 2*.

RIGHT TO APPEAL

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

DATED: August 29, 2016

_____/s/

LAURIE GORSLINE

Administrative Law Judge

Office of Administrative Hearings