

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT.

OAH Case No. 2018030791

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), State of California, on March 16, 2018, naming Burbank Unified School District, as respondent. The matter was continued for good cause on April 11, 2018, and July 16, 2018.

Administrative Law Judge Christine Arden heard this matter in Burbank, California, on September 11, 12, and 13, 2018.

Mother represented Student. Student was present at the hearing only when she testified. The hearing was interpreted into Spanish by interpreters provided by OAH to assist Mother.¹

Tamra Kaufman, Attorney at Law, represented Burbank. Tamara Schiern, Director of Special Education, attended the hearing on behalf of Burbank.

¹ On September 11 and 13, 2018, the interpreter was Pilar St. George. On September 12, 2018, the interpreter was Gioconda Aviles.

Following conclusion of the testimony, a continuance until October 1, 2018, was granted at the parties' request to file written closing arguments. The record was closed and the matter was submitted for decision on October 1, 2018.

ISSUE

1. Did Burbank Unified School District deny Student a free appropriate public education by breaching its child find obligation when it failed to identify Student as a child with a disability eligible for special education?

SUMMARY OF DECISION

Burbank did not refer Student for assessment for special education eligibility over two school years when she was struggling academically. Burbank believed Student's academic problems were not a result of a learning disability, but because Student had attended school in Mexico for a few years before reenrolling in Burbank, and because the primary language spoken at her home was not English. Student's Father sent an email to multiple Burbank professional staff members requesting an assessment. Burbank failed to respond to Father's email request and follow up phone calls.

Student did not establish a legal basis for extending the statute of limitations before March 16, 2016. Student last attended Burbank on May 26, 2018. The period in dispute was, therefore, March 16, 2016, to May 26, 2018.

Burbank breached its "child find" duty by failing to refer Student for a special education assessment during the relevant period because it was on notice that Student might have an impairment negatively affecting her academic performance. Burbank further breached its "child find" obligation to Student by failing to respond to Father's request for an assessment of Student with either an assessment plan or a prior written notice denying the request. The fact that less than 60 days remained in the school year did not excuse Burbank from appropriately responding to Father's request for an

assessment.

Student did not meet her burden to establish she was eligible for special education during the time period at issue. Burbank was ordered to provide two hours of training for administrators and guidance counselors on the topics of a school district's obligations to: refer students for assessments for special education eligibility; and respond to parental requests for assessments for special education eligibility.

FACTUAL FINDINGS

JURISDICTION

1. Student is a 16-year-old female, who was enrolled in Burbank Unified School District during the relevant time period.

BACKGROUND

2. Student's first language was English. The primary language spoken by Mother at home was Spanish. Student, who testified at hearing, spoke English fluently.

3. Father, who testified at hearing, spoke English fluently. The first language he learned was English. He did not reside with Student at the time of hearing.

4. Student first enrolled in Burbank for kindergarten. From Student's fourth grade year through the end of eighth grade, Mother and Father had marital difficulties resulting in periods of separation in which Student, Mother, and sisters lived in Mexico and Student attended school in Mexico.

5. According to Father the academic curriculum at the school Student attended in Mexico was quite different from the curriculum at schools in the United States. Student studied English, enjoyed school and did well there. She had a shorter school day and less homework, than she did while attending school in Burbank.

"ENGLISH LEARNER" CLASSIFICATION

6. Student attended school in Mexico during sixth grade and for the first two months of seventh grade. Student returned to Burbank in October or November 2014. Upon reenrollment, Burbank identified Student as an English Learner because the primary language spoken at her home was not English. Burbank's determination was based upon the parental response to four questions in a survey included in the registration packet.

7. English Learners received specially designed academic instruction in English within general education classes at Burbank. Specialized teaching techniques were used and some modifications to curriculum were made for English Learners. For example, English Learners sometimes worked in small groups with instructional aides, their tests were shorter, and vocabulary was modified to accommodate them.

8. English Learners were categorized into five levels of proficiency. Students at the first three levels (beginner, early intermediate and intermediate) were either new to the United States or low in English proficiency. They took an English Development class, in addition to their regular general education English classes. Students at the fourth (early advanced) and fifth (advanced) levels were placed in regular English classes only. Sometimes children who were at level four or level five learned English as their first language, but their parents primarily spoke a language other than English at home.

9. When Student reenrolled in Burbank in fall 2014, Ms. Traci Fellman, guidance counselor and coordinator of the English language development program, gave Student what Ms. Fellman described as "a quick language assessment" and determined Student was a level four English Learner. Student was placed in an English transitional class, referred to as English (T), which is a remedial class in the general education curriculum.

10. Each school year, English Learners were assessed for their English

proficiency by taking the standardized California English Language Development Test, which was administered at Luther Burbank Middle School by Ms. Fellman. Student took the California English Language Development Test in fall of the 2015-2016 school year. Based on the results of this test Student was still classified as a level four English Learner in eighth grade. Therefore, Student's English proficiency did not progress significantly from seventh to eighth grade.

11. Students at Luther Burbank Middle School regularly transitioned out of the English Learner program when their mastery of English proficiency improved beyond level five. Student never transitioned out of the English Learner program.

12. Burbank schools, including Luther Burbank Middle School, have parent advisory committees for parents of English Learners. These groups are specifically for parents who do not speak English well. Translators attend the meetings to assist parents. Mother participated in this parent organization.

13. Ms. Fellman was the guidance counselor for all English Learners at Luther Burbank Middle School in the 2014-2015 and 2015-2016 school years. She was Student's guidance counselor for both seventh and eighth grades because Student was classified as an English Learner.

14. Ms. Fellman had worked at Luther Burbank Middle School since 1994. She held a bachelor's degree in English, and a master's degree in educational psychology with an emphasis on school counseling. Ms. Fellman held a teaching credential, pupil personnel services credential, and a certification as a language development specialist. In addition to being a guidance counselor, she has also been the English language development program coordinator at Luther Burbank Middle School for the last 14 years. Before becoming a guidance counselor, Ms. Fellman was an English teacher for 13 years. In that position she taught English to gifted children and English as a second language classes. Ms. Fellman does not speak Spanish. She had extensive experience as

both an English teacher and a guidance counselor in dealing with children who have deficits in English proficiency because they either learned another language before English or, as is Student's circumstance, English is not the primary language spoken at home.

15. During each of the last three years, Ms. Fellman has had from 250 to 300 students in her case load as a guidance counselor. Typically, sixty to eighty of her assigned students were English Learners. Ms. Fellman had a significant caseload of students likely to have complex problems.

BURBANK'S STUDENT SUCCESS TEAM

16. Burbank's general practice was to assist students having problems in school by first holding a Student Success Team meeting. Those meetings generally included some, or all, of the following: parents, teachers, the assistant principal, school psychologist, guidance counselor and students. Ms. Fellman, as a guidance counselor, scheduled Student Success Team meetings, gathered records, and invited participants to meetings. Student Success Team meetings were usually held before a child was referred for assessment for special education eligibility.

17. Generally, at initial Student Success Team meetings participants discussed their concerns about a student, and reviewed grades, records and comments of teachers. The Student Success Team then suggested interventions to facilitate the child's improvement. Examples of recommended interventions were: tutoring; intervention classes; help from a family services agency, guidance counselor or an intervention specialist, who targets children at risk regarding academics, attendance and social issues; and inclusion in peer group meetings dedicated to helping students develop organization strategies. The Student Success Team might also refer the child for assessment for special education eligibility. The guidance counselor monitored the effectiveness of the implemented interventions. A second Student Success Team

meeting was often held to see if the interventions have been successful. An assessment for special education does not always result from Student Success Team meetings.

SEVENTH GRADE – 2014-2015 SCHOOL YEAR

18. In seventh grade Student was aware she was academically behind her classmates at Luther Burbank Middle School. She had to make adjustments because teaching strategies and curriculum used at Burbank differed from those used at her former school in Mexico.

19. Student's seventh grade English teacher informed Ms. Fellman she was concerned about Student's low reading level. Student's seventh grade math teacher told Student she needed extra help with math, but did not offer Student extra assistance. Overall, Student had serious academic difficulties in seventh grade.

20. Although it was Burbank's usual course of action to initially address a student's problems through a Student Success Team meeting to consider possible general education interventions, no Student Success Team meeting was held during the 2014-2015 school year to address Student's academic struggles. Moreover, Student was not referred for a special education assessment that school year.

EIGHTH GRADE - 2015-2016 SCHOOL YEAR

21. Student attended Luther Burbank Middle School for eighth grade throughout the entire 2015-2016 school year. Sometime between March 2015, and December 2015, Mother, Student and her sisters, moved away from Burbank and to within the geographic boundaries of the Los Angeles Unified School District, where they resided until July, 2018. Burbank did not know Student had moved and was living outside of its geographic boundaries.

22. Father visited Student every weekend and two or three times during the week during the 2015-2016 school year. Student was depressed and blamed herself for

her Parents' separation. Student lost motivation, was suffering from low self-esteem, and missed her former family unit. Student received therapy outside of school and attended a church youth group for emotional support. Burbank was not aware of Student's changed family circumstances at this time.

Student's Academic Struggles

23. In eighth grade Student was again enrolled in an English transitional class, referred to as English 8 (T), which was a remedial English class in the general education curriculum. Most students enrolled in the English (T) classes read around three years below grade level. In order to transition out of an English (T) class to a regular level English class, a student must read at no more than a few months below grade level. Student's reading level was more than a few months below grade level.

24. Student's academic difficulties worsened in eighth grade. She worked slowly on her homework and struggled to complete it. She received assistance with homework once or twice a week from Oscar Tolentino, an adult family friend, who speaks English and Spanish. Mr. Tolentino testified at hearing. Student frequently had difficulty understanding his explanations of math problems and other academic tasks. Mr. Tolentino noted Student was frustrated, depressed, and sometimes angry over her academic failures, and that she occasionally cried as a result of her frustration. Mr. Tolentino appeared to be a candid and honest witness as to his observations of Student's struggles, but he had no training or experience as a professional educator.

25. Father also occasionally helped Student with homework. He noticed the volume of assigned homework was too much for Student and she often was not able to complete it.

26. During the 2015-2016 school year Student stayed after school one hour twice a week, for voluntary tutoring offered to students needing extra help. One hour a week she received tutoring in math, and the other hour she received tutoring in history.

This extra help was still not enough for Student to succeed in her academic classes and she continued to have serious academic problems.

27. Student could not catch up in math during the 2015-2016 school year. Her math homework was often wrong and she did not know why. Student's math teacher was happy if Student merely turned in her homework, even if it was wrong. Student would have liked to have had more help with math. She received a failing grade in math.

28. In the first semester of the 2015-2016 school year Student met with Ms. Fellman to discuss the fact that Student was in danger of not meeting the minimum grade point average required to participate in the eighth grade graduation ceremony, class trip and party. Student did not know how to raise her grade point average. She was stressed, anxious, and depressed, primarily due to her academic difficulties. Parents' separation also may have contributed to her anxiety and depression. Ms. Fellman provided no explanation as to why a Student Success Team meeting was not scheduled as soon as Ms. Fellman realized Student was in danger of not meeting the minimum requirements to participate in the eighth grade graduation ceremony.

29. Student did not receive therapy or counseling services at Luther Burbank Middle School. Ms. Fellman was not aware that Student was depressed and anxious, or that her Parents had separated.

Student Success Team Meeting in December, 2015

30. In about December, 2015, a Student Success Team meeting was held to address Student's poor grades, below grade level reading, and the possibility that Student would not meet the promotion eligibility requirements. Mother, Ms. Fellman, and Dr. Tawanda Pullen, school psychologist, attended the meeting. A Spanish translator attended to assist Mother. Ms. Fellman thought that some teachers and Student may have also been at that meeting. However, Mother did not recall meeting with Student's teachers that school year.

31. By the time of the Student Success Team meeting, Student was failing one or two classes. She often failed to turn in homework, although Student spent significant time during evenings and weekends working on her homework. The Student Success Team determined that the likely reason Student was behind academically was because she had attended school in Mexico for significant periods of time throughout her elementary and middle school years. The Student Success Team did not consider referring Student for an assessment for special education eligibility because the team determined Student's problems were related to her deficiencies in reading English, curriculum gaps because she attended school in Mexico at different times, and because Spanish was the primary language spoken at home. No members of the Student Success Team suspected Student had a learning disability, even though she continued to fail academically and no formal assessments had been conducted. No documentation memorializing this Student Success Team meeting was introduced as evidence, so all accounts of it were reliant on Ms. Fellman's testimony, as she was the only witness at hearing who recalled the Student Success Team meeting.

32. The team recommended Student take an English Intervention class in the spring semester, instead of an elective, in addition to her English (T) class, to address her below grade level reading. After school tutoring may have also been recommended.

33. In the second semester of the 2015-2016 school year Student enrolled in an English Intervention class in addition to her remedial English (T) class. The class was taught by Vicki Thalheimer, a general education English teacher. According to Ms. Thalheimer, the students in that class were behind at least two grade levels in English and reading.

34. At the hearing Ms. Thalheimer testified she did not remember Student. Ms. Thalheimer's regular practice was to refer students enrolled in her classes for assessment for special education eligibility if she suspected they had a learning disability. Ms.

Thalheimer assumed she did not remember Student because she likely had not spent a lot of extra time with her. The inference from this statement was that Student did not need extra help from Ms. Thalheimer, in contrast to other students in the English Intervention class.

35. Ms. Thalheimer had been teaching English classes at Luther Burbank Middle School for the last 29 years. She had significant experience teaching children having difficulties with English and reading in her English Intervention classes, and in the after school tutoring sessions she conducts twice a week. Ms. Thalheimer very credibly testified about teaching English to children whose primary language, or the primary language spoken by their parents at home, was a language other than English. Ms. Thalheimer also had substantial experience teaching children who had attended school outside the United States. She convincingly opined that these children frequently had gaps in their education. Ms. Thalheimer was a very credible witness, who testified knowledgably, candidly and honestly. The weight of her testimony was given reduced weight because she could not remember Student and was, therefore, unable to offer information about Student. However, her opinions regarding children who were previously educated in another country, and whose parents spoke a primary language other than English at home, were relevant to Student's circumstances.

36. Ms. Jeanne Carino, Student's physical education teacher in the 2015-2016 school year, noted that Student, who earned a C in her class, socialized well with her peers, followed directions appropriately, and generally performed satisfactorily in her class. Ms. Carino did not suspect Student had a learning disability, or any other problems. Ms. Fellman never contacted Ms. Carino regarding Student's academic difficulties. Ms. Carino had no recollection of ever being contacted by Mother, or of attending a Student Success Team meeting about Student. Ms. Carino testified openly and honestly. However, because Student's English reading proficiency was likely not

material to her success in a physical education class, Ms. Carino's testimony was given little weight.

37. None of Student's teachers reported to Ms. Fellman that they suspected Student might have a learning disability. According to Ms. Fellman, school psychologist, Dr. Pullen, informally reviewed Student's work samples and test results and concluded that Student's academic problems were a result of her English language deficiencies related to her school attendance in Mexico, and were not a result of a suspected learning disability. Dr. Pullen's review of Student's work samples and test scores did not constitute a formal assessment of Student for special education eligibility. There was no evidence regarding which work samples or test results Dr. Pullen reviewed and the samples were not introduced as evidence. Dr. Pullen did not testify at hearing.

REQUEST FOR ASSESSMENT

38. The judge in Parents' divorce proceeding appointed attorney Elizabeth Castaneda as counsel for Student and her siblings. Attorney Castaneda informed Parents she had met with Ms. Fellman about Student. Ms. Fellman remembered only that attorney Castaneda wanted Student's report cards and attendance records. Ms. Castaneda did not testify at hearing.

39. Mother asserted that, near the end of 2015, the judge presiding over Parents' pending divorce proceeding requested that Student and her sisters be assessed for special education eligibility, and this request was memorialized in a written court order or some other document. Mother's testimony on the issue of the court's order or request that Student and her sisters be assessed for an individualized educational program, was nonspecific and confusing.

40. Mother testified she gave the court order to Dr. Thomas Kissinger, Burbank's Assistant Superintendent of Instructional Services on an unspecified date in the 2015-2016 school year. Mother claimed she spoke with Dr. Kissinger about the

court's assessment request after attending a parents' meeting at Burbank's administrative building. Mother asserted Dr. Kissinger told her it would be impossible for Student and her sisters to need IEPs because Mother and Father had both gone to college. Dr. Kissinger credibly testified he did not remember speaking to Mother about Student, but he was confident he never made this statement to Mother or any parent.

41. Dr. Kissinger knew Mother because she had been active in the parent teacher association at the time Dr. Kissinger was principal at Providencia Elementary School when Student and her older brother attended school there. He did not remember interacting with Mother during the 2015-2016 school year. Dr. Kissinger appeared to be a candid, straightforward, honest, well informed, and competent witness. His testimony that he did not, and would not, tell any parent that special education eligibility was impossible for a child whose parents had gone to college was significantly more credible than Mother's contradictory testimony regarding their alleged conversation. Given Dr. Kissinger's background in education², his demeanor while testifying, and his testimony that he did not recall having any conversation with Mother about Student during that school year, it is more likely than not that Mother's recollection about a conversation with him is not accurate.

42. On March 31, 2016, at 3:28 p.m. Father wrote an email requesting that Student be assessed for special education. He sent the email to Dr. Oscar Macias, principal of Luther Burbank Middle School; Traci Fellman, Student's guidance counselor at Luther Burbank Middle School; Dr. Tom Kissinger, assistant superintendent; Elizabeth Castaneda, counsel for Student and her siblings; Jennifer Culbertson, principal at

² Dr. Kissinger has a doctorate in educational leadership, and a master's degrees in education and psychology. He also has significant teaching and educational administrative experience.

Providencia Elementary School; and two others. Father copied Mother on this email. Father's email stated that the judge presiding over Parents' pending divorce proceeding requested Student and her sisters be "tested for an IEP." The email further requested that the addressees call Parents to schedule an appointment to address their assessment request and so Parents could sign any necessary paperwork. Father closed the email with both Parents' names and phone numbers. None of Father's March 31, 2016 emails "bounced back." Therefore, he reasonably assumed that all of the addressees had received his March 31, 2016 email. Father's testimony corroborated Mother's testimony that the judge in the divorce proceeding had recommended Student be assessed for special education eligibility.

43. Father did not recall if anyone responded to his email. At hearing Father had a printout of his March 31, 2016 email in his hands as he read from it while testifying. Father's testimony in general was very credible, and his testimony specifically regarding his March 31, 2016 email to Burbank personnel was extremely credible, was corroborated by Mother's testimony, and was not refuted by any other evidence. None of the addressees of Father's email testified that they received an email from Father or that they had searched their incoming emails from March 31, 2016 (or any other time).

44. Father followed up on his March 31, 2016 email with two phone calls to Dr. Macias. During the first phone call in mid-April, 2016, Father spoke with Dr. Macias. Father credibly testified that Dr. Macias told Father he would schedule the testing and that Dr. Macias was rude, curt, and appeared uninterested during his brief phone call with Father.

45. About one week after the first phone conversation between Father and Dr. Macias, around the third week of April, 2016, Father called Dr. Macias again to follow up as to when the "IEPs would be scheduled," but Dr. Macias did not answer. Father left Dr. Macias a voicemail reminding him to follow up about the requested testing for IEPs. Dr.

Macias did not call Father back.

46. Dr. Macias testified that his practice was to forward all concerns regarding English Learners to Ms. Fellman, and to forward special education concerns to Luther Burbank Middle School Assistant Principal of Instruction, Laura Vineyard, who did not testify at hearing. There was no evidence that Dr. Macias forwarded Father's March 31, 2016 email to either Ms. Vineyard, Ms. Fellman, who was also an addressee of the email, or anyone else. There was no evidence that any Burbank employee followed up on Father's email request for an assessment. There was also no evidence that Dr. Macias conferred with either Ms. Vineyard, Ms. Fellman, or anyone else following either of Father's two phone calls to Dr. Macias, or that Dr. Macias, Ms. Vineyard, Ms. Fellman or any Burbank employee followed up on Father's two phone calls to Dr. Macias requesting a meeting to arrange a date for Student's assessment.

47. About April 3, 2016, Mother spoke with Dr. Macias about Father's March 31, 2016 email to him and other Burbank personnel, requesting an assessment of Student for special education eligibility. According to Mother, Dr. Macias advised her to speak with Ms. Fellman.

48. Dr. Macias was acquainted with Mother because she was on the English Learners' parent advisory committee, but he did not recall having any conversation with Mother about Student. He appeared to be a very busy administrator, who assumed another member of his staff would handle the assessment request made in Father's March 31, 2016 email. Dr. Macias did not recall Father's email, but he also did not claim he had done a search for emails from either Mother or Father about Student. Also, he did not claim there were protocols in place at Luther Burbank Middle School to assure that requests from parents made to either him or his staff for special education assessments were handled and not inadvertently allowed to fall through the cracks.

49. Dr. Macias held weekly meetings with the Luther Burbank Middle School

professional staff. He did not raise Father's March 31, 2016 email request for an assessment of Student with the staff at any of these meetings, or any other time. He did not keep a list of requests for assessments he had received in order to follow-up with his staff about them. Dr. Macias justified this by noting he trusted his staff and did not micro-manage them. At the weekly staff meetings Dr. Macias asked staff members "what is on your plate?" There were no agendas for these meetings.

50. Pursuant to Dr. Macias' direction, Mother then spoke with Ms. Fellman. Mother testified that Ms. Fellman told her Student did not need extra help and refused Mother's request that Student be assessed for special education. Ms. Fellman refuted Mother's testimony regarding the substance of their conversation. Ms. Fellman did not recall Mother ever requesting a special education assessment of Student. She remembered only that Mother requested a meeting about Student's poor grades and that Mother was considering taking Student out of Luther Burbank Middle School to either attend a local private school, or move back to Mexico. Ms. Fellman's testimony regarding her conversation with Mother was more credible than Mother's. Mother was an unreliable historian who often seemed confused and could not recall material facts, details and dates. Mother had trouble with her memory, which she attributed to problems related to extraction of her wisdom teeth seven years ago. Also, it is likely that Mother and Ms. Fellman may have misunderstood each other, since Mother was not fluent in English and Ms. Fellman did not speak Spanish.

51. Dr. Macias did not remember seeing any papers from a court regarding Student. He testified he receives a very large number of emails daily. If a letter is received at Luther Burbank Middle School addressed to Burbank, it is sent unopened to the district administrative offices.

52. Dr. Kissinger did not remember receiving Father's March 31, 2016 email requesting an assessment of Student and her sisters for special education eligibility. He

testified that he received a very large number of emails daily, including many that went directly to his junk mail folder, which he did not check. No Burbank employees contacted Dr. Kissinger regarding Father's request for an assessment of Student for special education.

53. Burbank did not provide an assessment plan for Student to Parents. No Burbank employee contacted Parents regarding Father's March 31, 2016 email, or was responsive to Parents' attempts to follow up with Burbank personnel about it. Burbank did not send Parents a prior written notice denying Father's March 31, 2016 email request for assessments of Student and her sisters.

DISENROLLMENT FROM BURBANK

54. Burbank notified Father in a letter dated April 14, 2016, that it had become aware Student and her sisters were not residing within the Burbank boundaries. Therefore, Student and her sisters would be disenrolled from the Burbank as of May 26, 2016, the last day of the 2015-2016 school year.

PROMOTION ELIGIBILITY REQUIREMENTS AND EXCLUSION FROM GRADUATION ACTIVITIES

55. During at least a portion of the 2015-2016 school year Ms. Fellman pulled Student out of class at least every other Friday to discuss Student's ongoing academic problems. Student and Ms. Fellman discussed Student's repeated failure to turn in homework assignments. Ms. Fellman's conversations with Student were limited to the topic of Student's poor grades. Ms. Fellman spoke to Mother multiple times during the 2015-2016 school year about Student's continuing academic problems. Ms. Fellman did not suspect Student had a learning disability, but was convinced Student's ongoing academic problems were a result of her lack of English reading proficiency and cultural factors, which Ms. Fellman noted were legal exceptions to eligibility for special

education under the category of specific learning disability.

56. In order to participate in eighth grade completion celebrations, which included the graduation ceremony, class party, and Disneyland class trip, Luther Burbank Middle School required its eighth grade students to meet promotion eligibility requirements. The requirements consisted of a specified minimum grade point average and passing grades in 10 out of 12 academic classes. Students who failed to meet promotion eligibility requirements were promoted to ninth grade, but were excluded from the school's graduation activities. Student's academic performance in eighth grade was so poor that she failed to meet the promotion eligibility requirements. As a result, she was not allowed to participate in the school based eighth grade graduation/completion celebrations, which greatly disturbed Student.

57. The last day Student was enrolled in Burbank was May 26, 2016, when she completed eighth grade.

58. At the beginning of the 2016-2017 school year Student enrolled in the Los Angeles Unified School District, and attended the Allied Charter School. Student was found eligible for special education in ninth grade at Allied Charter School under the category of specific learning disability.

59. At hearing Student did not present evidence that she was, or should have been, eligible for special education while attending Burbank.

OPINIONS OF TAMARA SCHIERN, BURBANK'S DIRECTOR OF SPECIAL EDUCATION

60. Ms. Schiern, who has held the position of Burbank Director of Special Education since July 1, 2017, testified at hearing. She was not familiar with Student before the commencement of this action. As Director of Special Education she supervised Burbank's special education program. She had a master's degree in psychology. Before becoming special education director, she was a school psychologist at both Burbank elementary and high schools from 1998 to 2017. As a school

psychologist, Ms. Schiern attended approximately 50 Student Success Team meetings a year, conducted initial assessments, attended IEP meetings, managed cases, assisted program specialists, and created, supported and supervised the emotionally related mental health services program. She appeared to testify candidly, honestly and knowledgably but had no personal knowledge of Student.

61. Ms. Schiern had access to, and reviewed, only a scant amount of Student's educational records because Burbank had sent all of Student's records to Los Angeles when Student enrolled there at the beginning of the 2016-2017 school year. Pursuant to her request, Ms. Schiern had received a few of Student's educational records from Los Angeles shortly before the hearing.

62. Ms. Shrien conceded the request contained in Father's March 31, 2016 email to various Burbank professional employees constituted a parental request for an assessment for special education eligibility. She acknowledged that if Burbank employees received Father's March 31, 2016 email, Burbank had an obligation to respond to Parents by April 14, or 15, 2016, with either an assessment plan or by declining the request to assess Student. Burbank did neither.

63. According to Ms. Schiern, it was Burbank's practice to not conduct special education assessments right away on children who are English Learners because it did not want to mislabel a child as having a learning disability if the problem was the child's English proficiency. General education interventions were tried before assessments for special education eligibility were conducted.

64. Ms. Schiern opined that because the last day of the 2015-2016 school year was May 26, 2016, there was not ample time remaining in that school year following Father's March 31, 2016 email to assess Student. If Burbank had timely provided Parents with an assessment plan by April 15, 2016, and Parents had immediately returned the signed assessment plan to the school, Burbank would not have had the entire 60 day

requisite period to complete an assessment of Student in that school year. The assessment period would have then rolled over to the following school year, and Student did not attend Burbank the following school year. If the assessment of Student had been started, that data would have been forwarded to either Parents or Los Angeles.

65. There were eight weeks, or 56 days, from March 31, 2016, the day Father emailed his request for an assessment to multiple Burbank administrators and professional employees, to May 26, 2016, the last day of the 2015-2016 school year. Burbank had 15 days, or until April 15, 2016, to respond to Father's request with either an assessment plan, or a prior written notice denying Father's request and explaining the reason for its denial. If Parents had timely received and immediately returned the signed assessment plan to Burbank, there would have been 41 days, or approximately 6 weeks, between April 15, 2016, and May 26, 2016. This six week period could have been used by Burbank to conduct, or at least start, an assessment of Student.

LEGAL AUTHORITIES AND CONCLUSIONS

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)⁴ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that

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

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

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, 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; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide

educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth 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. In a recent unanimous decision, the United States Supreme Court declined to interpret the definition of FAPE a manner that was at odds with the *Rowley* court’s analysis, and clarified FAPE as “markedly more demanding than the ‘merely more than the de minimus test’...” (*Endrew F. v. Douglas School Dist. RE-1* (2017) 137 S.Ct. 988, 1000 (*Endrew F.*)). The Supreme Court in *Endrew* stated that school districts must “... offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable a student to make progress appropriate in light of his circumstances.” (*Id.* at p. 1002.)

5. 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).)

6. 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 is the party petitioning for relief and has the burden of proving the essential elements of her claim with a preponderance of the evidence. (*Schaffer, supra*, 546 U.S. 49, at p. 62.)

STATUTE OF LIMITATIONS

7. 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. (I).) The statute of limitations for due process complaints in California is two years prior to the date of filing the request for due process. (Ed. Code, § 56505, subd. (I); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (I), establish exceptions to the statute of limitations. Exceptions to the statute exist where the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or the local educational agency withheld information from the parent that it was required to provide.

8. There was no evidence presented at hearing that Parents were prevented from filing a request for due process due to specific misrepresentations by Burbank that it had resolved the problem forming the basis of Student's complaint. Furthermore, no

evidence was presented that Burbank withheld information from Parents which it was required to provide to them pursuant to state or federal law. Because the complaint was filed on March 16, 2018, the earliest date Burbank is subject to culpability in this matter is March 16, 2016 (two years before the complaint was filed). Since the last date Student was enrolled in Burbank was May 26, 2016, the time period at issue in this matter is from March 16, 2016 through May 26, 2016.

ISSUE: DID BURBANK BREACH ITS CHILD FIND OBLIGATION TO STUDENT BY FAILING TO FIND HER ELIGIBLE FOR SPECIAL EDUCATION?

9. Student contends Burbank breached its child find obligation when it failed to assess her for special education eligibility and identify her as a child with a learning disability, despite her academic struggles in seventh and eighth grades. Burbank contends it did not breach its child find obligation to Student because it reasonably believed Student was behind academically, not due to a learning disability, but as a result of curriculum gaps caused by Student's history of attending school in Mexico, on and off for significant time periods throughout her elementary and middle school years. Burbank further contends Student's below grade level reading in English was also partially because Spanish was the primary language spoken in her home.

10. School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may be in need of special education and related services. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56171, 56300 et seq.) This ongoing duty to seek and serve children with disabilities is referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivisions (a) and (b). This duty extends to all children "suspected" of having a qualifying disability and a need for special education. (34 C.F.R. § 300.311; *N.G. v. District of Columbia* (D.D.C. 2008) 556 F.Supp.2d 11, 26.) Pursuant to

this standard, the appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. The threshold for "suspicion" that a child may have a disability is relatively low. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1195.) "The IDEA requires that, if a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using the thorough and reliable procedures specified in the Act. School districts cannot circumvent that responsibility by way of informal observations, nor can the subjective opinion of a staff member dispel such reported suspicion." (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1118–1119.) A district's child find duty is not dependent on any request by the parent for special education testing. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, § 56301; *Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518 (*Reid*).

11. The federal district court for the Northern District of California held, "... the state has reason to suspect that a child may have a disability where: (1) there is a suspicion that a student has an impairment that is affecting the student's educational performance; or (2) a parent requests special education services or an assessment of eligibility for special education services." (*Simmons v. Pittsburg Unified Sch. District* (N.D. Cal., June 11, 2014, No. 4:13-CV-04446-KAW) 2014 WL 2738214, at *6 citing Cal. Code Regs., tit. 5, § 3021(a), and *Park v. Anaheim Union High Sch. Dist.*, (9th Cir. 2006) 464 F.3d 1025, 1032.)

12. A pupil shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code, § 56303.) Although a district is required to utilize the resources of its regular education program, where appropriate, to address a student's exceptional needs, it may not delay its assessment of a student with a suspected

disability on the basis that it is utilizing a response to intervention approach to accommodate the student in the regular education program.

13. When a student is referred for special education assessment, the school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral, not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral. (Ed. Code, § 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, § 56321, subd. (c)(4).) The district has 60 days from the date it receives the parent's written consent, excluding days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days, to complete the assessments and develop an initial IEP, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, § 56043, subds. (c) & (f).)

14. The law defines an individual with exceptional needs as one who, because of a disability, requires instruction and services that cannot be provided with modification of the regular school program in order to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subd. (b).) A request for an initial evaluation to determine whether a student is a child with a disability in need of special education and services can be made by either the parent or a public agency. (34 C.F.R. § 300.301(b).)

15. Child find does not guarantee eligibility for special education and related services under the IDEA. It is merely a locating and screening process that is used to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the public agency must conduct an initial evaluation to confirm the child's eligibility for special education. (34 C.F.R. § 300.301; Ed. Code, § 56302.1.)

16. Burbank was on notice that Student was having serious academic

difficulties shortly after she reenrolled in the district in November of the 2014-2015 school year. Despite the fact that Student's seventh grade English teacher had expressed concern about Student's below grade level reading, Burbank did not hold a Student Success Team meeting for Student in seventh grade. By the end of the 2014-2015 school year at the latest, Burbank should have held a Student Success Team to consider if general education interventions or a special education assessment, or both, were warranted in light of Student's ongoing academic problems. This did not occur.

17. Student's academic problems continued in eighth grade, even though she went for voluntary tutoring after school twice a week, and often received help with homework from Mr. Tolentino and Father. By fall of the 2015-2016 school year Ms. Fellman met with Student because she was in danger of failing to meet the minimum promotion requirements for eighth graders. Ms. Fellman was so concerned about Student's academic failures that she pulled Student out of class at least every other Friday during at least part of the 2015-2016 school year to discuss Student's academic problems. This fact alone established Burbank was on notice that Student might have an impairment negatively affecting her educational performance. Consequently, Burbank should have referred Student for an assessment for special education eligibility by the end of the 2015-2016 school year.

Burbank's failure to refer Student for assessment

18. A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (20 U.S.C. § 1401(30)(A); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a).; Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities, including association, conceptualization,

and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).) A specific learning disability does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, intellectual disabilities, emotional disturbance, or environmental, cultural, or economic disadvantage. (20 U.S.C. § 1401(30)(C); 34 C.F.R. §§ 300.8(c)(10)(ii), 300.309(a)(3); Ed. Code, § 56337, subd. (a).)

19. Burbank defended its failure to refer Student for assessment because it believed she would not qualify for special education eligibility under the category of specific learning disability due to applicable exceptions of cultural factors and limited English proficiency. However, Burbank's defense is misplaced because the duty to assess was not dependent on Student's eligibility, but arose when Burbank was on notice that Student may have an impairment affecting her academic performance. Burbank should have reasonably suspected Student's continuing academic failures might have been due to a learning disability. The informal assessments and subjective opinions of the school psychologist and guidance counselor did not relieve Burbank of its duty to refer Student for a formal assessment by the end of the 2015-2016 school year.

Burbank's failure to respond to Father's March 31, 2016 request for assessment

20. Father credibly testified that he wrote an email on March 31, 2016, to five Burbank administrators and professional staff members, requesting that Student be "tested for an IEP," and followed up with Dr. Macias twice via telephone to emphasize the need for assessment. All referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, staff of the school district, special education local plan area, or county office shall offer assistance to the individual in making a request in writing, and shall assist the individual if the individual requests such assistance. (5 Cal. Code Regs. § 3021.) Once Father's email was sent, Burbank had an obligation to either provide Parents with an

assessment plan, or to send Parents a prior written notice denying their request for an assessment of Student and explaining the reasons for its denial by April 15, 2016.

Burbank failed to provide Parents with either an assessment plan, or a prior written notice denying their request for an assessment. Burbank simply neglected its duty to timely respond to Parents' written request for an assessment of Student.

21. Burbank's defense that 60 days did not remain in the 2015-2016 school year, and, therefore, the requisite time for completion of the assessment expired before Student's last day in Burbank, does not eliminate its obligation to respond to Father's request for an assessment. Burbank's failure to either provide an assessment plan or a prior written notice denying the request constitutes a material procedural violation. Valuable time was wasted in the last quarter of Student's eighth grade, when an assessment could have been started and, possibly completed or partially completed, before the end of the school year.

PROCEDURAL VIOLATIONS

22. Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and applicable state law. (*Department of Educ., State of Hawaii, supra*, 158 F.Supp.2d at p. 1196; *D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 249–250; *Board of Educ. of Fayette County, Ky. v. L.M.* (6th Cir. 2007) 478 F.3d 307, 313; *Park, supra*, 464 F.3d 1025, 1031.))

23. Procedural flaws do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i)-(iii); Ed. Code, § 56505, subds. (f) and (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1483–

1484.)(superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B).)

24. A procedural violation does not constitute a denial of a FAPE if the violation fails to “result[] in a loss of educational opportunity [.]” *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 651 (Gould, J., concurring). A child ineligible for IDEA opportunities in the first instance cannot lose those opportunities merely because a procedural violation takes place. *Cf. Nack ex rel. Nack v. Orange City School Dist.* (6th Cir. 2006) 454 F.3d 604, 612 (procedural violation denies a FAPE “only if such violation causes substantive harm to the child or his parents” (internal quotation marks and citation omitted)). In other words, a procedural violation cannot qualify an otherwise ineligible student for IDEA relief. *R.B., ex rel. F.B.v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 941, 942.

25. Burbank did not even draft an assessment plan, let alone start the assessment of Student. Burbank disenrolled Student at the end of her eighth grade year. Burbank disregarded its procedural obligations to Student.

26. Student failed to establish that she was or should have been eligible for special education while attending Burbank.

REMEDIES

1. As a remedy for Burbank’s procedural violations, Student requests that Burbank provide her with extensive tutoring by a nonpublic agency and weekly counseling by a private therapist because Burbank breached its “child find” obligation to her and it failed to timely respond to Father’s request for an assessment of Student for special education eligibility. Burbank disagrees and contends Student is not entitled to tutoring and/or counseling at its expense because it did not breach its “child find” obligation to Student since she was an English Learner, and it reasonably did not

suspect she had a learning disability. Burbank further contends that its error in failing to respond to Father's request for an assessment caused no harm because there was not adequate time remaining in the 2015-2016 school year to conduct an assessment of Student.

2. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) However, the ninth circuit has held that under the IDEA, a procedural violation that does not result in the loss of an educational opportunity does not constitute a denial of a FAPE. (*R.B., ex rel. F.B. v. Napa Valley Unified School Dist., supra*, 496 F.3d at p. 942,) When a student is ineligible for special education there can be no loss of educational opportunities. *Ibid.* An award of compensatory education is not available to a student who fails to establish he was eligible for special education for the school years at issue. (*Burnett v. San Mateo Foster City School District* (9th Cir., June 26, 2018, No. 17-15841) 2018 WL 3120298, at *1.) Since Student failed to meet her burden that she was, or should have been, eligible for special education during the time period at issue, she is not awarded compensatory education.

3. In an action brought under the IDEA, courts have broad equitable powers to grant such relief as they determine appropriate. (20 U.S.C. § 1415 (i)(2)(C)(iii).) 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.* (2009) 557 U.S. 230, 243, n. 11.) The IDEA does not require compensatory education services to be awarded directly to a student, so staff training is an appropriate remedy. (*Park v. Anaheim Union High School Dist., supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher

appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.*) See, (*Student v. Reed Union School District* (2008) Cal. Offc. Admin. Hrngs. Case No. 2008080580, p. 8. [requiring training on predetermination and parental participation in IEP's].

4. By September 1, 2019, Burbank shall provide at least two hours of special education training to all of its principals, assistant principals of instructional services, guidance counselors and the associate superintendent of instructional services, in the areas of a school district's obligations under the IDEA and state law to: refer students for assessment for special education eligibility; and respond to parental requests for their children to be assessed for eligibility for special education. The training shall be provided by an independent provider, not affiliated with Burbank, specializing in special education training to school districts. Burbank shall notify Mother in writing within ten days of the date it has completed such training.

ORDER

1. By September 1, 2019, Burbank shall provide at least two hours of special education training to all of its principals, assistant principals of instructional services, guidance counselors, and the associate superintendent of instructional services, in the areas of a school district's child find obligations under the IDEA and state law. Such training must address a school district's obligations to: refer students for assessment for special education eligibility; and respond to parental requests for their children to be assessed for eligibility for special education. The training shall be provided by an independent provider, not affiliated with Burbank, specializing in special education training to school districts. Burbank shall notify Mother in writing within ten days of the date it has completed such training.

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 was the prevailing party on the sole issue presented.

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: November 9, 2018

_____/s/_____

CHRISTINE ARDEN

Administrative Law Judge

Office of Administrative Hearings