

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT,

Respondent,

OAH CASE NO. N 2005110764

STUDENT,

Petitioner,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N2007020519

DECISION

Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings, Special Education Division, State of California, heard this matter in Bellflower, California on February 2, 5, 6, 7, April 2, 3, 4, 5, 6, 13, May 4, 14, and 15, 2007.

Tania L. Whiteleather, Esq., represented Student (Student). Student's mother (Mother) attended the hearing on April 13, 2007. Rodney Ford, advocate for Student, attended several days of hearing. Student did not attend the hearing.

Eric Bathen, Esq. represented the District (District). Victoria Medina, Assistant Superintendent for Special Education, attended each day of the hearing on behalf of the District. Natalie Citro, assistant to Mr. Bathen, also attended each day of the hearing.

Student filed her initial due process complaint on April 7, 2005. On April 28, 2005, the parties settled and dismissed the expedited issues contained in the complaint. SEHO declared the remaining matter unexpedited. Between April 4, 2006 and February 2, 2007, the parties vacated and rescheduled the DPH dates five times.

On February 2, 2007, the DPH commenced with the District's motion to dismiss Student's issue pertaining to the expedited portion of the complaint and interim agreement. The ALJ granted the motion, and dismissed Issue number 2(a) as contained in the pre-hearing order filed January 29, 2007.

On February 7, 2007, the ALJ suspended the hearing pending Student's filing of a new due process complaint covering similar issues for 2005-2006, along with a motion for consolidation. On March 5, 2007, the ALJ consolidated the matters and scheduled the DPH to reconvene on April 2, 2007, for 10 days of hearing. The timeline of the consolidated matters is based on Case No. N2007020519. Due to illness and unavailability of multiple witnesses, the DPH was continued to hearing on April 13, May 14 and 15, 2007. The parties completed testimony on May 15, 2007. The parties submitted closing briefs on June 8, 2007, and the record closed at 5:00 p.m. on June 8, 2007. The parties each waived time for decision.

ISSUES¹

- A. Did the District deny Student a free and appropriate public education (FAPE) by committing procedural violations of the IDEA? Specifically,
 - 1. Did the District fail to assess Student in all areas of suspected disability in the

¹ The issues stated herein are a composite of all issues contained in the March 17, 2007, consolidation of Student's due process complaints. The issues have been reframed for clarity and to conform to the evidence presented.

- 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006 school years?
2. Did the District fail to adequately address and document Student's progress on her annual goals in the 2004-2005 and 2005-2006 school years?
 3. Did the District fail to provide Student with an appropriate transition plan in the 2003-2004, 2004-2005, and 2005-2006 school years?
- B. Did the District substantively deny Student a FAPE? Specifically,
1. Did the District fail to provide services and goals for Student in the areas of receptive language, auditory processing, reading, math, social/emotional skills and mental health in the 2002-2003, 2003-2004, and 2004-2005 school years?
 2. Did the District fail to implement Student's IEPs? Specifically,
 - a. Did the District fail to ensure that teachers and service providers were knowledgeable about Student's September 2002 IEP?
 - b. Did the District fail to implement accommodations contained in Student's September 2002 IEP?
 - c. Did the District fail to implement the Alpha Smart accommodation contained in Student's October 2004 IEP?
 3. Did the District fail to provide Student placement in the least restrictive environment in the 2005-2006 school year?
- C. Is Student entitled to reimbursement for the Independent Expert Evaluation (IEE) obtained from Lindamood-Bell?
- D. Is Student entitled to any compensatory education?

CONTENTIONS

Student contends that the District failed to fully and appropriately assess Student over the years, primarily in the areas of speech and language and auditory processing. As a result, the District did not fully identify Student's needs in these areas, and therefore Student did not receive appropriate services. Student further contends that the District

knew of Student's multiple social-emotional/mental health diagnoses, yet did not conduct assessments in those areas. As a result, Student received no services to address social skills or mental health needs. The District contends that it appropriately assessed Student in all areas of suspected needs from April 8, 2002, until Student's exit from the District in August 2006. Further, with regards to Student's social skills and mental health needs, the District contends Student's diagnoses are reflected in Student's IEP documents, and the District appropriately addressed her manifestations when they occurred.

Student contends that the District failed to address and document Student's progress, or lack thereof, on her annual goals at the IEP meetings. Without this information, Mother could not meaningfully participate in Student's IEP process. As a further result, Student's IEPs did not provide her with meaningful educational benefit. The District contends that the IEP teams created appropriate and measurable goals in each of Student's annual IEPs. These goals addressed Student's specific needs and allowed her to make progress in a variety of areas.

Student contends that the District failed to provide Student with adequate and appropriate transition plans. Student contends that the District failed to address academic issues and provide services which impacted Student's career options and prevented her from entering any competitive field of employment. The District contends its transition plans met all requirements set forth in the IDEA.

Student contends that despite the District's continued identification of Student as learning disabled (LD), and despite Student's low scores in reading, math, and written language, the District did not write goals or provide services to address those needs. As a result, Student failed to make any meaningful educational progress academically and is still unable to read at a functional level. The District contends it appropriately determined Student's learning disabilities and needs at all times.

Student contends the District committed several compliance failures which resulted in a denial of substantive FAPE for Student. As a result, Student's academic skills declined

and she failed to make meaningful educational progress. The District contends that any such compliance inadequacies did not result in a loss of educational opportunity or seriously infringe on Mother's opportunity to participate in the IEP process.

Student contends that the District did not provide Student with services to allow her to make progress in the least restrictive environment during 2005-2006 school year. Student did not receive the services she required, but instead, Student received inferior services, provided in the most restrictive educational setting on the high school campus. The District contends the placement offered to Student was entirely appropriate and satisfied the requirements of the IDEA.

Student contends that the District should reimburse Student for an IEE from Lindamood-Bell which was requested by Mother at the September 2005 IEP meeting. Student contends that the District, in response, took no action, thereby requiring Mother to seek the IEE on her own. The District contends that Mother unilaterally sought the Lindamood-Bell assessment, in spite of appropriate assessment done by the District.

FACTUAL FINDINGS

1. Student is 18 years old, and a senior in high school. Between 1991 and 2001, Student's various school districts assessed her for special education several times, and each assessment resulted in a determination that student was ineligible for special education. Beginning in 1991, however, Student began receiving remedial speech and language services as well as 504 accommodations for her ADHD. In August 2001, the District qualified Student for special education services due to a learning disability (LD) based upon a significant discrepancy between Student's ability and achievement in the area of math, complicated by processing disorders in attention and auditory memory. Student received special education services from the District until June 2006, when she relocated to Wisconsin with her family. Student provided her mother a power of attorney to pursue her educational rights in this matter.

2. Student alleges that she was denied a FAPE on numerous grounds beginning on April 8, 2003, and continuing through August 1, 2006, when she moved to Wisconsin. In general, a school district provides a FAPE to a student if the student has been deemed eligible for special education, and the district has provided that student with a placement and program designed to address his/her unique educational needs and which was reasonably calculated to provide some educational benefit in the least restrictive environment. If the special education program and related services meet the above factors, then the district has provided a FAPE, even if the student's parents preferred another program or another program would have resulted in greater educational benefit to the student than the program offered by the district. A school district's program need not maximize the student's potential.

DID THE DISTRICT FAIL TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY FROM APRIL 8, 2002, THROUGH JUNE OF 2006?

3. Student contends that the District failed to fully and appropriately assess Student over the years, primarily in the areas of speech and language and auditory processing.

4. In order for the district to develop a special education program which will address the student's unique needs resulting from his/her disability, the district must assess the student in all areas of suspected disability. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE.

5. Generally, a school district is required to ensure that a student is assessed in all areas of suspected disability, and that assessment tools and strategies provide relevant information that directly assists in determining the educational needs of the student. In conducting an assessment or reassessment, a school district is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and

academic information, including information provided by the parent, which may assist in determining whether the student is a child with a disability and matters relating to the student's IEP.

2001-2002 SCHOOL YEAR (7TH GRADE):

6. Before any action is taken with respect to the initial placement of a student with exceptional needs in a special education program, a district is required to conduct a full and individual initial assessment of the student.

7. On May 6, 2001, Mother requested a psychoeducational assessment of Student. In her request, Mother expressed doubts about the effectiveness of Student's 504 program and her educational progress. In August 2001, the District assessed Student and found her eligible for special education for the 2001-2002 school year, under the classification of LD. Based upon this psychoeducational assessment, the IEP team determined that Student demonstrated a significant discrepancy between her ability and achievement in the academic area of math compounded by a processing disorder in auditory memory and attention. ²Cognitively, Student scored within the low average range. Mother did not dispute the assessment and subsequently agreed to the IEP derived from the assessment.

8. Special education students may be reassessed, if conditions warrant, or if the parent or teacher requests a new assessment.

9. In March 2002, Mother expressed concerns about Student's lack of communication with teachers, and the problem of Student not turning in her homework. The District held an IEP on April 9, 2002, however, there is no record of any discussion of a need for additional assessments at this time. Further, Student presented no additional

² Reference to the 2001 psychoeducational assessment is for background purposes only. Any issues regarding the assessment itself is barred by the statute of limitations.

evidence to suggest any assessments were requested or recommended for the 2001-2002 school year for the short period of time after April 8, 2002. Based upon the evidence presented, the District did not fail to assess Student in all areas of suspected disability in the 2001-2002 school year after April 8, 2002.

2002-2003 SCHOOL YEAR (8TH GRADE):

10. Student contends that in the 2002-2003 school year, the District failed to adequately assess Student in the areas relating to speech/language, auditory processing, receptive language, and reading comprehension.

11. As previously stated, special education students must be reassessed every three years, or more frequently, if conditions warrant, or if the parent or teacher requests a new assessment.

12. Student received speech and language services since 1994. In September 2002, the District conducted Student's triennial reassessment in speech and language. Richard Walker, a Speech and Language Pathologist (SLP)³ for the District, reassessed Student. Mr. Walker provided Student with speech and language services, primarily in articulation, in the 7th through 11th grades.

13. For this assessment, Mr. Walker administered the Second Contextual Probes of Articulation Competence (Secord). This test assessed Student's production of target sounds in all positions of words. Mr. Walker also assessed Student's articulation during conversational speech and reading aloud. He concluded that Student could generally produce the /r/ sound accurately. He also indicated that Student understood what she was reading. Mr. Walker then administered the Adolescent Test of Problem Solving (ATOPS) to measure Student's critical thinking skills. The test measured Student's effective

³ Richard Walker has been a SLP for 27 years. His employment with the District involves assessing students and designing remediations.

receptive, processing and expressive language abilities. Student did extremely well on this test. At age 14, Student scored an age equivalency of 18-2 (18 years, 2 months). Mr. Walker concluded that Student's one phoneme articulation error no longer qualified her for the remedial language and speech program. Mother disagreed with Mr. Walker's conclusion, and requested an IEE.

14. As requested, the District provided an IEE from Newport Language and Speech Centers (Newport). Newport⁴ assessed Student over three days in October/November 2002. Newport administered the Clinical Evaluation of Language Fundamentals, 3rd edition (CELF-3), the Test of Language Competence-expanded edition (TLC) and the Goldman Fristoe-2 Test of Articulation. Newport determined that Student continued to have an articulation impairment surrounding the /r/ phoneme. Student also presented with a mild receptive and expressive delay. The Newport assessors concluded that Student's expressive difficulties "appeared to be due to a decreased ability to understand abstract concepts," and her receptive difficulties "may be the result of auditory comprehension." Newport recommended that Student receive individual speech and language services two hours a week. Newport further concluded that remediating the /r/ difficulties would improve Student's grades and social interactions by improving her self-esteem and self-confidence. The Newport assessment did not recommend reading services.

15. Shortly after receipt and review of the Newport assessment, the District again reassessed Student in the area of speech and language. Cindy Stevens⁵ prepared Student's

⁴ Kym Asahara, who performed the assessment at Newport, is a licensed SLP. She was assisted by Robert Leonard, a student intern. Neither Ms. Asahara nor Mr. Leonard testified in this hearing.

⁵ Ms. Stevens is a SLP for the District. She has a B.S. in Speech and Hearing Science and a M.A. in both Speech Pathology and Audiology. She has a teaching credential and is a

Speech and Language Assessment Report dated February 3, 2003. The District assessed Student in one session, and administered the Comprehensive Assessment of Spoken Language (CASL), Fisher-Logemann Test of Articulation and an Informal Oral Motor and Voice Evaluation. Ms. Stevens incorporated the Newport test results, as well as Mr. Walker's assessment results, in her report. In the areas of receptive language skills of auditory comprehension, grammatical understanding, and knowledge of word meanings, Student scored within the low average to average range, commensurate with her cognitive ability. Student's expressive language skills, expressive vocabulary, ability to organize and express her thoughts, ability to organize and produce grammatically complete sentences, all appeared to be within the average/normal range. Her overall communication effectiveness was well within the normal range. Student had difficulty comprehending complex directions and ideas, and continued to exhibit a significant articulation disorder. Ms. Stevens concluded that Student qualified for speech and language services and recommended direct speech and language services as well as consultative services to Student's teachers in regular education classes to assist them in breaking down information and directions sufficiently in order to optimize Student's comprehension. With regards to receptive language and comprehension skills, Ms. Stevens opined that the best place to deal with comprehension difficulties is in the classroom where it is happening. It is more effective to make certain a student understands the information as the data is being provided, rather than pull the student out of class for speech/language services.

16. Mr. Walker clearly failed to assess Student as extensively as Newport or Ms. Stevens. This, however, did not make his assessment inappropriate. Mr. Walker had provided speech and language therapy to Student for several years. Her primary speech and language deficit had been identified as articulation of the /r/ sound. Mr. Walker

master teacher/teacher trainer for the District. She has experience preparing assessments, administering testing protocol and attending IEP meetings.

assessed this deficit in the Secord and through Student's conversation and reading aloud. He also administered the ATOPS which measured Student's expressive and receptive language skills. She scored extremely high on this test. Student's 2002 IEP contained a goal designed to improve her reasoning skills. She had completed and exceeded her objectives on that goal. Mr. Walker noted that Student did not exhibit any auditory processing problems in the speech program. She had no problems following directions and could understand what she read aloud. Based upon the information available to Mr. Walker at the time, the September 2002 speech and language assessment was appropriate. Ms. Stevens's assessment incorporates the Newport assessment and included additional testing of Student's comprehension and communication skills. The District did not fail to assess Student in all areas of suspected disability in the areas of speech and language, auditory processing, receptive and expressive language or reading comprehension in the 2002-2003 school year.

2003-2004 SCHOOL YEAR (9TH GRADE):

17. For the 2003-2004 school year, Student again contends that the District failed to adequately assess Student in the areas relating to speech/language, auditory processing, receptive language, and reading comprehension. Again, the District is only required to reassess a student every three years, or more frequently, if conditions warrant, or if the parent or teacher requests a new assessment.

18. In September 2003, the District reassessed Student's articulation using the Secord. Mr. Walker found that Student produced the /r/ sound with 88 percent accuracy when reading aloud. Although Mr. Walker only tested articulation, he again found that Student understood what she read, and showed no signs of reading comprehension difficulties. Mr. Walker's belief that Student understood what she read was evidenced by Student's vocal expressions demonstrated when reading aloud. Further, the prior extensive assessments conducted and reported in Ms. Stevens's February 3, 2003

assessment report detailed Student's unique needs in the areas of auditory processing and comprehension.

19. Academically, Student's grades fluctuated, however she obtained a 3.66 grade point average by the end of the year. There were no teacher reports or other evidence that suggested Student required additional assessments. Neither Mother nor the District sought any additional assessments during the 2003-2004 school year. As a result, the District was not required to provide further assessments, and therefore did not fail to assess Student in areas of speech/language, auditory processing, receptive language, and reading comprehension.

20. Student contends that although the District knew of Student's social/emotional and mental health issues in the 2003-2004 school year, the District failed to conduct assessments in those areas.⁶

21. A school district is required to address behavioral and emotional goals in special education only with regard to those problems which affect a student's educational progress.

22. The 2001 IEP, and each annual IEP thereafter, indicated that Student had multiple social-emotional/mental health diagnoses, including bipolar disorder, attention deficit hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD). Each diagnosis had been verified by Student's mother, medical doctor, and therapist, all of whom indicated that Student's conditions were controlled by medication and private therapy. Mother described more acute behaviors at home with family members. With the exception of attention and motivation problems, none of Student's teachers observed classroom behaviors which suggested a need for additional assessments in these areas.

⁶ Although in her pleadings Student raised this issue commencing as of April 8, 2002, Student addressed the issue at hearing commencing as of the 2003-2004 school year.

23. In March 2004, however, the District became aware that Student engaged in "cutting," a behavior which she made cutting marks on her arms. David Avalos⁷ a school psychologist for the District, conducted a crisis intervention. Generally, cutting behavior is due to emotional distress. After interviewing Student, her parents, and her private therapist, Mr. Avalos concluded that Student was not suicidal or homicidal. The parents and therapist acknowledged Student's cutting behaviors, which were connected to family stress issues at home. Mother acknowledged these issues were already being addressed in Student's family and individual therapy. Further, Student ceased cutting. As a result, Mr. Avalos concluded that the behavior was being adequately handled privately by the family. Student provided no evidence to support her claim that this incident impeded her access to education. Mr. Avalos appropriately investigated the incident. No further behavioral or social/emotional assessments were needed at this time.

2004-2005 SCHOOL YEAR (10TH GRADE):

24. For the 2004-2005 school year, Student again contends that the District failed to adequately assess Student in the areas relating to speech/language, auditory processing, receptive language, and reading comprehension. Student further contends that the assessment protocols were improperly administered.

25. A special education student must be reassessed every three years. In conducting the reassessment, a school district must follow numerous and specific testing regulations. A district must employ individuals who are both qualified to administer the

⁷ Mr. Avalos is a licensed educational psychologist for the District. He has a B.A. in Human Services and Counseling, an M.S. in Counseling/Psychology, and an M.A. in Educational Psychology. Mr. Avalos has worked for the District since 1988. He has been a school psychologist for nine years, and is experienced in assessing students, crisis intervention and group counseling. He also supervises the District's social skills program.

specific assessments given, and must be knowledgeable about the student's disability. Testing and assessment materials and procedures must be selected and administered so as not to be racially, culturally, or sexually discriminatory, and must be administered in the student's native language. Further, in California, tests of a student's intellectual or emotional functioning must be administered by a credentialed school psychologist.

26. On January 7, 2005, Mr. Avalos conducted Student's triennial psychoeducational reassessment. The reassessment report included a review of Student's school records, information from the parents, observations of Student's classroom performance, and observations from Student's teachers and other service providers. The assessments were given in Student's primary language, and were non-discriminatory. The District used a variety of tests, including the Wechsler Abbreviated Scale of Intelligence (WASI), Woodcock-Johnson, Tests of Achievement, Third Edition (WJ-III), Kaufman Test of Educational Achievement (KTEA), Burks Behavior Scales, Test of Auditory-Perceptual Skills Upper Level-Revised, and Beery Test of Visual Motor Integration-Second Edition (VMI). The assessment also included a parent questionnaire of Student's health and a hearing and vision screening conducted by a school nurse.

27. The WASI scores indicated Student cognitively functioned in the low average range. Mr. Avalos determined the discrepancy between Student's verbal and performance IQs was not significant, however Student had a relative strength in non-verbal perceptual organization (untimed tests), and weakness with processing speed. Mr. Avalos gave an abbreviated version of the WASI. Since Student had previously been given the full WASI, Mr. Avalos used the abbreviated testing to verify the prior results. The abbreviated test scores confirmed the prior WASI results.

28. The WJ-III indicated Student's basic reading skills in the average range, however, her passage comprehension skills scored within the low average range. Student's overall written language skills fell in the low average range.

29. The KTEA subtests in mathematics indicated student scored below average in

both application and computation. Student's estimated ability appeared significantly higher than her math application scores on the KTEA.

30. The VMI indicated that Student exhibited average visual motor integration skills.

31. Mr. Avalos administered portions of the TAPS-UL-R (TAPS) to assess Student's auditory processing skills. On three subtests given, Student scored within normal limits of her estimated ability. Student had relative weaknesses with word memory items and open ended critical thinking. Student showed a significant weakness in auditory reasoning and expression. Processing deficits continued in the areas of auditory perception, visual processing and attention.

32. Student further contends that Mr. Avalos's failure to administer the entire TAPS resulted in a failure to assess in all areas. Student's argument is unpersuasive. Mr. Avalos indicated that an auditory processing deficit could affect areas of memory, word discrimination, thinking and understanding. He acknowledged that Student had needs in auditory processing, and indicated that the portion of the TAPS protocol he did not administer tested these areas. Instead, Mr. Avalos administered another test to assess additional auditory processing areas such as word discrimination. Student's direct examination of Mr. Avalos presupposed that the TAPS would be invalidated if not given in its entirety. No evidence was presented, however, to suggest individual portions of the test could not be administered to assess specific needs, or that the individual protocol scores could not stand alone.

33. Clearly, Student's scores on the TAPS declined 19 points from her prior scores in 2001. Mr. Avalos admitted that a drop in scores could indicate problems, but he did not consider this to be a significant decline or change in scores, as he administered the TAPS for the upper grade levels. Mr. Avalos also noted that difference between both administrations may have been Student's concentration during the test. Although Student's scores changed in descriptive range—from low to borderline, Mr. Avalos opined

that they did not represent a significant drop for LD criteria. Further, while the parties may disagree as to the interpretation of Student's scores, the scores themselves do not represent a failure to assess in all areas of suspected disability.

34. The District did not reassess Student in speech and language. As reported in the January 2005 psychoeducational assessment, Student had experienced no significant educational changes in the last three years. Additionally, there is no evidence that any additional speech and language assessments were warranted at this time. Having provided a full reassessment of Student, in 2003 the District was not required to reassess in this area.

35. The January 7, 2005 psychoeducational assessment met the standards for an appropriate reassessment, including the requirement that the District assess in all areas of suspected disability. Further, Student failed to show that the District was required to assess Student in the area of speech and language at this time.

36. Student again contends that the District failed to adequately assess Student in social/emotional and mental health areas. The District's obligations to assess in these areas have been previously stated in Factual Finding 21.

37. As part of the 2005 triennial assessment, Mother was interviewed and completed a questionnaire regarding Student's moods and temperament. Mother described Student as caring but emotional and argumentative. At times Student shows intense "highs" followed by periods of sadness or depression. Mother further indicated that Student demonstrated inattentive, uncooperative, anxious, aggressive and inappropriate behaviors at home. Mother also contributed to Student's current health assessment by providing information regarding Student's ADHD medication.

38. Student's therapist completed the Burks Behavior Rating Scales (Burks) which assessed Student's social/emotional behavior. In the Burks, the therapist rated several areas as very significant, including, excessive resistance, excessive aggressiveness, and poor anger control, poor sense of identity, poor attention and poor impulse control. Student

also rated significant in areas of poor social conformity, excessive sense of persecution, excessive suffering, poor reality contact, poor academics, poor intellectuality, poor coordination excessive withdrawal, and poor ego strength. The therapist also reported that Student has very significant concerns with attention, impulse control, anger control, sense of identity, and resistance. Mr. Avalos, in his report, noted that most of these described behaviors were not seen at school. Staff observations indicated that Student exhibited inattentiveness, social inappropriateness, impulsivity, and poor motivation. Teachers reported Student was very shy. Thus far, school staff had not observed oppositional behavior from Student.

39. Based upon the information from Student's therapist and Mother, Mr. Avalos concluded that in addition to her LD, Student experienced significant emotional conditions which manifest through depression and difficulty in maintaining satisfactory interpersonal relationships. These difficulties affected Student's learning by reducing the number of Student's peer interactions and creating a reluctance to take extra curricular mainstreaming risks. The conclusions drawn by Mr. Avalos in this assessment allowed the IEP team to determine that student also qualified for special education services due to emotional disturbance (ED).⁸ The District did not fail to assess Student in social/emotional or mental

⁸ On March 21, 2005, Student caused a fire on school property. The District also found Student in possession of three books of matches as well as a knife with a 2-1/2 inch blade. The events of the day resulted in Student's suspension, as well as Student's initial request for due process hearing in this matter. On April 27, 2005, as part of an interim agreement obtained in confidential mediation of the expedited issues of the due process matter, the District agreed to provide a Functional Analysis Assessment of Student (FAA), which was performed in May 2005. The issues, which related to Student's suspension, were withdrawn as part of the mediation agreement. Prior to the commencement of this current hearing, the ALJ determined that all issues related to the suspension and expedited

health areas.

40. Although the District's January 2005 assessment was appropriate, Mr. Avalos did not assess Student in the area of auditory processing disorder (APD). Mr. Avalos indicated that APD is a malfunction of the central nervous system, and is therefore outside the scope of a school psychologist's assessment. On April 27, 2005, the District agreed to provide an independent educational assessment in speech and language and a full APD assessment to be provided by Providence Speech and Hearing Center (Providence).⁹ Aprile Engalla,¹⁰a clinical audiologist at Providence, administered an audiological assessment in which Student exhibited normal hearing sensitivity. Ms. Engalla also performed an auditory processing assessment of Student, which utilized the Children's Auditory Performance Scale (CHAPS) and the A Test for Auditory Processing Disorders in Adolescents and Adults (SCAN-A). Additional testing included several subtests from the Tonal and Speech Materials of Auditory Perceptual Assessment (VA-CD) and the Auditec NU-6.

41. Ms. Engalla concluded that Student met the criterion for a probable auditory processing disorder. She recommended that Providence provide a further assessment of speech and language to define Student's areas of strength and weakness in auditory processing as well as to determine what compensatory strategies might be helpful.

42. A SLP for Providence administered the CELF-4, and the Arizona Articulation

matters were resolved in 2005. As such, reference to the interim agreement and events leading to it in this decision are made only for timeline purposes.

⁹ This assessment was also part of the interim agreement reached on April 27, 2005, and reference to the mediation agreement is made for timeline purposes only.

¹⁰ Ms. Engalla is a Clinical Audiologist. She has an M.A. in audiology and is licensed to perform hearing and audiology assessments.

Proficiency Scale, third edition (Arizona-3) to Student. The scores demonstrated moderate to severe language deficits with characteristics that supported a diagnosis of an auditory processing disorder (APD).

43. Elaine Brewster,¹¹ the Director of Clinical Services at Providence and Student's expert witness, provided solid testimony regarding APD. Although she did not prepare Student's speech and language assessment, she presented as highly qualified to interpret the assessment scores both at this hearing and the 2005 IEP meeting. The SLP gave Student the CELF-4. Ms. Brewster indicated that the assessment concerned itself more with the use of language than with reading. Student's CELF-4 scores indicated core language and expressive language skills within functional limits. Student's receptive language and language content skills scores confirmed severe deficits. Ms. Brewster also indicated that Student still had articulation difficulties; however, Student's articulation would not affect her education, but could affect her credibility and self esteem.

44. As part of the assessment report, Providence provided a written information sheet which explains APD and defines requirements for its assessment. Auditory processing is an individual's perception of sound or how the brain interprets what it hears. It is a complex phenomenon that occurs in the ear and areas of the brain and neurological pathways. Auditory processing is a continuum—there is no specific line between "normal" and "abnormal." As a result, there is no perfect test of auditory processing function, and not all tests are appropriate for all children. The District did not fail to appropriately assess Student in the 2004-2005 school year.

¹¹ Ms. Brewster has been licensed as a SLP for 25 years. She has a B.A. in Speech and Hearing Science and an M.A. in Speech-Language Pathology. Ms. Brewster has extensive speech-language experience.

2005-2006 SCHOOL YEAR (11TH GRADE):

45. For the 2005-2006 school year, Petitioner again contends that the District failed to adequately assess Student in the areas relating to speech/language, auditory processing, receptive language, reading comprehension and mental health.

46. As indicated for previous years, the District is only required to reassess a student every three years or more frequently, if conditions warrant, or if a parent or teacher requests a new assessment.

47. In January 2006, Mr. Avalos administered another psychoeducational assessment pursuant to Mother's request for a measurement of Student's nonverbal intelligence. The assessment report, dated January 9, 2006, referenced Student's past cognitive test scores on the KBIT, WASC-III, Matrices Analogies Test, and WASI. Mr. Avalos administered the Universal Nonverbal Intelligence Test (UNIT) and Cognitive Assessment System (CAS) to determine intelligence reconceptualized as cognitive processes. This is measured by two components, planning processes and attention processes. On the CAS Planning subtest, Student scored in the low average range. On the attention subtests, Student scored in the average range. The UNIT protocols emphasized memory and reasoning. On the UNIT, Student scored in the low average range. These scores were consistent with Student's previous test results. The District did not fail to assess in nonverbal intelligence as requested.

48. Student's grades in the 10th grade had been inconsistent. Regardless, her grade point average (GPA) always remained above 2.0. Student's GPA dropped significantly in the first semester of the 11th grade. Student contends that this slide resulted from a continuing decline, primarily in receptive language and reading comprehension. As a result, additional assessments were warranted in these areas. Student's school records and teacher testimony is to the contrary. According to Student's teachers, which is more fully discussed in Factual Findings 117 and 118, Student read on

grade level and understood core curriculum assignments. Student's school records are replete with notes referring to Student's failure to turn in homework assignments. Further, as a result of poor grades in the first semester, Student did not qualify for CIF swimming meets. Once disqualified, Student immediately concentrated on her studies and raised her GPA for the following semester in order to rejoin the swim team. Although Mother may have disagreed, the circumstances did not warrant additional assessments at this time.

49. In April 2006, Mother obtained an independent assessment from Lindamood- Bell (LMB). Kim Zakaryan,¹² the Center Director of Lindamood-Bell in Newport Beach, California, provided testimony regarding Student's assessment results, and the LMB programs available to Student. Although Ms. Zakaryan did not administer the tests to Student, she has experience with such testing, and is qualified to interpret Student's LMB test protocols and results of LMB assessments, as well as provide expert testimony regarding LMB and its programs.

50. LMB administered Student an extensive battery of tests, including the Peabody Picture Vocabulary Test-III, Detroit Tests of Learning Aptitude-4, Detroit Tests of Learning Aptitude-2, Woodcock Reading Mastery Test-NU, Slosson Oral Reading Test-R, Wide Range Achievement Test-Revised/3, Gray Oral Reading Test, Lindamood Auditory conceptualization Test-3, Symbols Imagery Test, and informal tests of writing. Student's scores exhibited both extreme strengths and weaknesses. Student performed at high school level or above on nine tests. She performed well below average on five tests.

¹² Ms. Zakaryan has been involved with LMB her entire career. Prior to her current post, Ms. Zakaryan acted as the Project Director for School Services for Long Beach USD and Los Alamitos USD, in which she trained teachers to provide LMB programs. Ms. Zakaryan has a B.A. in Liberal Studies, and has previously held a teaching credential. It is noted she is not a licensed psychologist, however, the LMB assessment is not a psychoeducational assessment conducted by a school district.

Student scored below average on Oral Directions, Comprehension and Math. She scored well above average on Oral Reading, Reading Accuracy and Fluency.

51. Ms. Zakaryan did not review any of Student's prior assessments conducted by the District or observe Student in the school setting. Although informative, her testimony provided no information regarding the appropriateness of the District's assessments. In comparison of the assessment documents however, it is noted that there are several similarities. Although the LMB assessment was reading specific, both LMB and the District assessed the same areas of suspected deficits, and both LMB and the District determined that Student had more areas of strength than weakness. The evidence from LMB fails to support Student's contention that the District failed to assess Student in the area of reading comprehension.

52. In the 11th grade, Student's stress levels and negative behavior began increasing. Ms. Gomez, one of Student's teachers that year, testified that Student could perform at grade level, but outside issues could affect her performance. When in conflict with her family or other students, Student's school work suffered. Ms. Gomez indicated that Student was having constant conflict with peers outside the classroom. If upset, Student would leave the classroom to visit her counselor. As a result, Student often did not finish her work or take quizzes. In response, in March 2006, the District obtained a mental health assessment (AB3632)¹³ of Student due to behaviors and emotional problems that appeared to be impeding Student's academic progress. The District acted appropriately in referring Student for an AB3632 assessment at this time.

53. The report from Mental Health described Student's problems as distractibility with careless mistakes on her work; mood swings from high energy to sadness or depression; talking excessively and interrupting others; difficulty organizing tasks; poor

¹³ Los Angeles County Department of Mental Health, mental health assessment prepared March 23, 2006, by Robert Trujillo, Ph.D. Dr. Trujillo did not testify in this hearing.

impulse control; poor anger management and aggressiveness; lack of motivation in academics; and social immaturity. The assessor reviewed Student's education records and assessments, and interviewed Student, her mother, and Ms. Sill, Student's teacher and case manager. The assessor concluded that Student met the eligibility requirements of AB3632, and required mental health treatment to benefit from special education programming. Recommendations for treatment goals included: (1) improving capacity for sustained attention and concentration and consistent completion of academic assignments; (2) improving anger management skills; (3) improving social problem solving skills; (4) alleviating depressive symptomatology; and (5) alleviation of anxiety and worry.

54. The District did not fail to assess Student in all areas of suspected disability between April 8, 2002 and August 1, 2006.

DID THE DISTRICT FAIL TO ADDRESS AND DOCUMENT STUDENT'S PROGRESS ON HER ANNUAL GOALS IN HER IEPs FOR THE 2004-2005, AND 2005-2006 SCHOOL YEARS?

55. A student's progress on individualized IEP goals must be measured and reported to the parent. An IEP must include a statement of how the student's progress towards the annual goals will be measured and how the student's parents will be regularly informed of the student's progress towards those goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The failure to do so is a procedural violation of the IDEA.

56. Student contends during the 2004-2005 and 2005-2006 school years, the District failed to address and document Student's progress on her annual goals. Therefore, due to this failure to document or report on Student's progress, Mother could not fully and meaningfully participate in any of the IEP meetings.

57. In both the 2004 and 2005 IEPs, each of Student's annual goals is defined and contains a statement of how Student's progress will be measured. As example, Student's 2004 IEP math goal stated that by October 2005, Student would be able to solve

problems using algebraic strategies as measured by work samples achieving criteria of 70 percent. This would be achieved in increments. By January 2005, Student would be able to solve problems using algebraic strategies as measured by work samples achieving criteria of 50 percent, by April 2005, achieving a criteria of 60 percent. Other goals for 2004 and 2005 IEPs reflected similarly crafted goals and benchmarks. With the exception of speech and language, however, the IEPs do not specifically document Student's progress towards reaching those goals. Further, each of the IEPs is silent as to how Mother is to be informed of Student's progress toward her goals.

58. Procedural flaws do not automatically require a finding of a denial of FAPE. While required elements of an IEP further important policies, "rigid" adherence to the laundry list of items required in the IEP is not required. A procedural violation may constitute a denial of a FAPE if it seriously infringes on the parents' opportunity to participate in the IEP process.

59. Pursuant to federal regulations in effect in 2003, a school district could inform parents of a student's progress on IEP goals through such means as periodic report cards. There is no dispute that Mother received each of Student's report cards, which reflected Student's academic progress for each quarter and semester of each school year. Student contends that the District's failure to provide a written record of Student's progress towards her goals prevented Mother from meaningfully participating in the IEPs and Student's special education program. The law, however, is to the contrary. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP, expresses her disagreement regarding the IEP team's conclusions and requests revisions in the IEP. There is no question that Mother extensively and completely participated in Student's IEP process. Although Mother clearly desired to be more thoroughly involved in Student's progress, none of the annual IEPs contained any special instructions which required the District to report to Mother on a more frequent basis than regular report cards.

60. Although not clearly defined as an issue by Student, a procedural violation may also deny a FAPE if it results in a material loss of educational opportunity for Student.

61. First, Student argues that the District's failure to maintain Student's class assignments or "work product" after completion of the school year supports Student's contention that the District did not adequately document Student's progress towards her IEP goals. Without such documentation, the District cannot show educational progress.

62. Each of Student's teachers testified that they offered each student in their class the return of their personal class assignments at the end of the school year. If a student did not want the assignments returned, the teachers disposed of them. While it would be prudent to retain a student's work product where litigation is anticipated, teachers are by no means required to retain a student's class assignments indefinitely, as in this case, a period of between two and five years. Further, Student has provided no authority to suggest that the District is precluded from documenting Student's progress by other means.

63. Student's math goal in the October 2004 IEP did not contain a progress report on the previous year's goal. Student's 2003-2004 grades, however, showed an improvement in pre-Algebra, from a D to an A. Additionally, the District again assessed Student's math abilities with the K-TEA and those scores were reported in Student's present level of performance. Specifically, Student continued to have difficulty in math understanding concepts and operations. Taken as a whole, all of this data provided adequate and appropriate information regarding Student's progress on her IEP goal in math. It is reasonable to conclude that Student reached her math goals by completing the school year with an A in pre-algebra. Student's speech and language goal was fully reported and was attached to the 2004 goal. The evidence does not suggest that Student suffered any loss of educational opportunity in the 2003-2004 school year.

64. The specific goals of the September 28, 2005 IEP did not provide the completion status of the previous goals. The body of information contained in the IEP as a

whole, however, provides a description of Student's progress toward goals. Four of Student's teachers were present at the IEP. Ms. Gomez, Student's history teacher, reported that Student was doing well in her class, was more positive, and participated more in class. Mr. LaGrosse, Student's math teacher, indicated that Student was cooperative and completing her assignments. Student's driver's education teacher indicated Student asked questions when she did not understand. Student's science teacher indicated that Student was doing well in class. None of the teachers noted non-compliant or oppositional behavior in class. Ms. Sill maintained a Progress Report of Annual Goals. The District provided Mother with Student's grade reports, which included teacher comments regarding incomplete assignments. Additionally, Mother, both directly and through Student's advocate, maintained continuing correspondence with the District and teachers regarding Student's problems and progress.

65. The District convened the February 17, 2006 IEP meeting to review Student's academic progress. Student's grades had dropped in the first semester of the 11th grade. Ms. Gomez indicated she had weekly e-mail contact with Mother. Ms. Sill reported that she communicated with Mother regularly on Student's progress, and sent home weekly progress reports.

66. Even assuming the District committed a procedural violation by failing to document Student's progress in the each of the goals of the IEP, the violation did not result in a denial of a FAPE. Student failed to establish that the failure to document progress denied Student access to education or denied any educational opportunity. Further, the IEP team fully discussed Student's progress at the IEP meeting and the District maintained continuing contact with Mother by various means, providing Mother with information regarding Student's progress. The District did not fail to address and document Student's progress on her annual goals in the 2004-2005 or 2005-2006 school years.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH APPROPRIATE TRANSITION PLANS?

67. Applicable California law in 2002 required that, beginning with the first IEP to be in effect when the student is 14 years of age, the IEP must include a statement of the transition service needs of the student. This statement must contain appropriate postsecondary goals that are based upon age appropriate transition assessments. The goals should relate to training, education, employment, and, where appropriate, independent living skills for a student after high school. The statement of transition services assumes greater importance as a student nears graduation and post-secondary life. The failure of an IEP team to comply with the requirements for transition planning is a procedural violation of the IDEA.

2003-2004 SCHOOL YEAR (9TH GRADE):

68. Student contends that she was denied a FAPE when the District failed to create a transition plan for her by her 14th birthday.

69. Student's first IEP to contain a transition plan was completed on September 23, 2003, five days short of her 15th birthday. As such, the District failed to have a transition plan in effect when she turned 14 years old. As previously discussed, a procedural violation of the IDEA does not automatically constitute a denial of FAPE. Further, transition services assume greater importance the closer a student nears graduation and post-secondary life. At the time of the initial Individual Transition Plan (ITP), Student was in the 9th grade, and had not yet turned 15 years of age. The severity of the violation should be viewed in the context of the entire ITP.

70. As part of the 2003 IEP, the District prepared an ITP, which according to the District, was designed to help Student develop long range goals, moving from school into adult life. Mother completed the Transition Planning Interview. Student indicated a vocational interest in massage therapy in her own interview. The IEP team determined that Student's goals would be (1) to gather assignments in a portfolio; (2) to begin to identify

Student's strengths and weaknesses; and (3) to think about career options. The team also determined that Student needed peer counseling, which was addressed in the IEP. Both Mother and Student participated in the IEP in which the ITP was crafted.

71. Student contends that the 2003 ITP failed to address Student's educational needs in academic areas and failed to provide services to assist Student in achieving her vocational goals. Specifically, Student contends that the ITP failed to provide reading services to Student to increase her reading comprehension to grade level to allow her to graduate with a diploma, obtain a driver's license, and prepare for college academics. Student provided no legal authority to support this contention or to suggest that, as part of an ITP, Student is entitled to more than the "basic floor of opportunity" in services as defined by *Rowley*. Student's ITP is part of the IEP, in which the IEP team determines Student's unique needs and academic supports based upon the entirety of information provided to them. As determined in Factual Findings 18 and 19, the IEP team did not find Student in need of remedial reading services as part of her IEP, therefore, it would not be required to provide reading services as part of her ITP. As a positive comparison, the ITP noted Student's difficulties with social skills, and indicated a need for peer counseling, which was provided to Student in the IEP.

72. The District created the 2003 ITP as an introductory transition plan for Student, who was then in the 9th grade. As stated by Mr. Avalos, the ITP was a work in progress. The ITP contained appropriate introductory goals, and it was not required to contain academic services not addressed as a need in the corresponding IEP.

73. The failure of an IEP team to comply with the requirements for an ITP is a procedural violation of the IDEA. However, the failure to properly formulate a transition plan warrants relief only upon a showing of a loss of educational opportunity or a denial of a FAPE. Student has not shown that the failure to have an ITP in place by Student's 14th birthday resulted in any loss of educational benefit to Student. Further, the goals created for Student in the 2003 ITP were appropriate for Student at that age.

2004-2005 SCHOOL YEAR (10TH GRADE):

74. Prior to July 1, 2005, the IDEA required a student's IEP to contain "a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study."

75. Student contends the 2004 ITP failed to provide Student with appropriate services. Further, the District failed to provide Student with a transition assessment as requested by Mother.

76. When Mother received the District's triennial reassessment plan in September 2004, and another again in December 2004, she requested, in writing, that the District provide Student with a transition assessment. The District did not do so. The only "assessment" contained in the October 10, 2004 ITP, consisted of an interview of Mother and Student.¹⁴ This failure, while not crucial at age 14 or 15, becomes more acute as Student ages and moves toward graduation. Student was 16 years old at the time of the October 2004 IEP.

77. Additionally, in 2004, the IDEA required, that beginning at age 16, a student's ITP include a statement of needed transition services, and when appropriate, a statement of the interagency responsibilities or any needed linkages. Student's 2003 ITP had indicated she would need the support services of the Department of Rehabilitation and the Resource Center. The 2004 ITP subsequently reported the same.

¹⁴ Neither party established what constitutes a transition assessment. The District's Assessment Plan form provides for a Transition Assessment which indicates "these instruments measure an individual's interest and abilities in the following areas. . . ." The District's ITP form contains a questionnaire which references each of those "following areas." It is difficult to equate this form with an "assessment instrument," and in any case, it was not prepared, incorporated, and interpreted as part of the total assessment in general.

78. Student and her mother attended the IEP/ITP of October 2004. No representatives of either the Department of Rehabilitation or the Resource Center attended the IEP/IPT meeting. The team determined that Student needed (1) to focus on her academic work to ensure that she graduated from high school; and (2) to begin considering career options. The team noted other areas of concern in financial planning, social interaction/behavior, vocational assessments and daily living. The team developed activities to assist Student in addressing her needs, however, the ITP provided no specific services for Student at this time. Student again raised her contention regarding reading services for the 2004 ITP, and for the same reasons as discussed in Factual Finding 71, the District did not offer reading services. Although the District had not provided a transitional assessment for this ITP, it was requested by the IEP team and addressed in the IEP. Again, the 2004 ITP indicated a need for the involvement of the Department of Rehabilitation and Resource Center, but no specific goals were included. The ITP created goals for Student, which on their face, appeared to be age appropriate. By age 16, however, without the added information which would have been gleaned from a transition assessment, as well as from the input of the Department of Rehabilitation or the Resource Center, the goals created were generic in nature and did not adequately address Student's unique needs. While these failures may not have been significantly detrimental to Student, if considered alone, the District made no attempt to correct them. The deficiencies continued into the 2005-2006 school year.

2005-2006 SCHOOL YEAR (11TH GRADE):

79. As of July 1, 2005, the reauthorized IDEA defined "transition services" as "a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education,

integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The reauthorized IDEA also requires that the IEP include a statement of measurable goals based on transition assessments and an outline of the services needed to assist the child in reaching those goals.

80. Student's September 21, 2005 IEP contained an ITP. The IEP team interviewed Mother and Student. The IEP team determined in the ITP that Student needed to focus on her academics and pass the California High School Exit Exam (CAHSEE) in order to graduate with a high school diploma.¹⁵ The IEP team placed Student in the study lab for her to develop skills to pass the CAHSEE. No other areas of need were denoted, however, Student's employment options were downgraded to supported employment.¹⁶ Ladell Sills, a member of the IEP team, believed the downgrade was a typographical error, and that Student remained capable of competitive employment. The evidence supports this belief. Nothing contained in the IEP or ITP activities record indicated a need for supported

¹⁵ Although Student could have been exempted from the CAHSEE, she was not. Student took the CAHSEE in the 10th grade and failed. By all reports, Student's teachers and staff believed Student was capable of passing the CAHSEE. Although Mother now testifies that Student was unable to pass the CAHSEE, the evidence indicates she supported the District's efforts in 2005-2006. The CAHSEE became a moot issue in 2006, when Student moved to Wisconsin. Wisconsin does not require a high school exit exam.

¹⁶ Supported employment as described by Mr. Avalos and Ms. Sills is the type of employment which requires constant supervision and directions or prompting. Competitive employment was described as employment within the mainstream work force in which one can obtain employment in the competitive job market and perform job skills independently.

employment. The ITP activities proposed that Student obtain her driver's license and obtain a part-time job. The ITP also specified community college for Student's vocational training.

81. The previous year, the 2004 IEP team had requested that Student receive a vocational educational assessment to determine career interests and specific vocational goals. The District did not provide this assessment. The failure to provide a vocational assessment previously requested by Mother, coupled with the IEP team's own directive to assess, constitutes a procedural violation. By the 11th grade, the omission of a transitional assessment had a direct impact on the validity of the ITP. Without the data provided by the assessment, Mother, Student, and the ITP team had insufficient information to make meaningful decisions regarding what activities or services would be needed for Student's post-high school transition. Specifically, the ITP does not address any progress on career preparation activities or describe any assistance the District will give to Student to achieve her career goal. Although the District considered Student on track to graduate high school, it also knew that she was of low average intelligence and had deficits which required placement in SDC. Student needed assistance in achieving a career goal. No one from the Department of Rehabilitation, Resource Center or community college attended the ITP. As a result, the ITP does not describe any type of assistance the District would give to Student to research physical therapy programs or explore other career choices. The District provided Student with no guidance as to where she could find helpful information regarding career choices. The omissions of the ITP are significant given the nature of Student's disability. As documented by the District, Student has inattentive ADHD and APD. Her deficits are in comprehension of oral instruction, organizational skills, note taking, and focus. Her disabilities, and past history of inability to focus and organize, should have been indicators to the District that Student needed specific guidance in how to locate information, how to determine what she would need in order to qualify for admission to specific programs, and how to complete the application processes.

82. Additionally, Student needed specific guidance on where to find information about accommodations available to her in post-graduation learning institutions. Student needed guidance on which offices to contact at the community college if she felt she would need accommodations. Finally, given Student's homework issues, she needed techniques to help her overcome her organizational problems if she was going to be successful after high school, where the special education supports she received through an IEP might not be available. The addition of information from the support service providers named in the two prior ITPs would have addressed these issues.

83. The District failed to provide Student with an appropriate transition plan in both the 2004-2005 and 2005-2006 school years, which deprived her of educational benefits and therefore denied her a FAPE.

DID THE DISTRICT FAIL TO IMPLEMENT STUDENT'S IEPs?

84. Student contends that the District failed to ensure that teachers and service providers were knowledgeable about Student's September 24, 2002 IEP, and that the District failed to implement Student's accommodations contained in that same IEP.

85. A school district is required to insure that an IEP is in effect before special education and related services are provided to a student and is implemented as soon as possible following the IEP meeting. Further, the student's IEP must be accessible to each regular education teacher, special education teacher, related service provider who is responsible for its implementation.

86. Each teacher and provider must be informed of his/her specific responsibilities related to implementing the student's IEP as well as the specific accommodations, modifications, and supports that are to be provided for the student in accordance with the IEP.

87. The parties, pursuant to stipulation, admitted Student's compliance complaints and California Department of Education (CDE) findings into evidence. Two of

Student's alleged substantive violations in this matter are duplicative of Student's allegations in her compliance complaint of January 2003. For purposes of factual determination, this decision takes notice of the CDE Compliance Investigation¹⁷ which determined the District failed to implement the required modifications contained in Student's September 24, 2002 IEP, during the first three weeks of the 2002/2003 school year and the District failed to ensure that teachers and service providers were knowledgeable of the content of Student's IEP for the first three weeks of the 2002-2003 school year.

88. A CDE finding of non-compliance is not a determination of a denial of FAPE. Further, there is no statutory requirement in the IDEA for perfect adherence to the IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA, unless it is shown to have materially failed to implement the student's IEP. A material failure occurs when the services provided to the student fall significantly short of those required by the IEP.

89. Student contends that the failure to have the IEP in place and teachers knowledgeable of the IEP during the first three weeks of the school year, resulted in Student's failing grades in most of her classes for the first semester of the 2002-2003 school year. The District disagrees that the three-week delay in implementing the IEP caused Student's decline. Student offered no additional testimony to support her contention. The documents entered into evidence by both parties, however, reference additional correspondence and activities between Mother and the District regarding the failures of the September 2002 IEP.

90. On October 10, 2002, Mother attended Back-to-School Night and was informed by her teachers that Student was failing or struggling in most of her classes. Mother reported that Student's history teacher was unaware that Student was in the

¹⁷ Report No. S-0477002/03, dated March 28, 2003.

special education program. Written reports from Student's teachers confirm Mother's concerns. The reports indicated Student was failing most of her classes, was having some difficulty listening and following directions, and was not turning in homework or classroom assignments. As a result, on October 20, 2002, Mother wrote the District and complained about Student's September IEP, and requested that Student be placed in SDC.

91. Student's private therapist followed up with a letter to the District (dated October 28, 2002) which indicated that Student's emotional disability prevents her from assimilating information and learning her academics. The therapist further reported that "Student and her mother report that both they and Student's teachers agree that Student consistently fails to meet the expectations of the mainstream classroom." The therapist concluded that based upon Student's emotional and behavioral impairment, she would benefit from placement in a smaller, more individualized classroom which would more adequately address her educational and emotional needs.

92. After additional assessment, the District held an addendum IEP meeting on December 9, 2002. Student's teachers reported that although her accommodations were in effect, Student's grades remained low. Student still failed to turn in assignments, and often came to the RSP teacher for help without her notes and assignments. It was agreed that Student's difficulty understanding, coupled with her frequent failure to complete class work and homework, indicated that Student needed the higher level of support found in SDC. As Mother requested, the District subsequently transferred Student to primarily SDCs.

93. The failure to implement a student's IEP must be a material violation and result in a denial of education benefit to the student. Student presented insufficient evidence to substantiate her contention that the District materially failed to implement the September 2002 IEP. Her failing grades did not tell the whole story. To the contrary, the evidence supports that the District did provide Student with the services and accommodations of the IEP, and her teachers were aware of and were utilizing her IEP as of October 20, 2002. Student's failing grades resulted from several problems, none of

which were caused by the delay in implementation of the IEP.

94. Student contends that the District failed to implement the Alpha Smart accommodation contained in her October 12, 2004 IEP. Student's contention is duplicative of an allegation in Mother's subsequent compliance complaint to CDE.¹⁸ This time, CDE found the District out of compliance with 34 Code of Federal Regulations, section 300.350(a)(1), for failing to implement the October 13, 2004 IEP accommodations regarding an Alpha Smart device for Student. Student did not receive the Alpha Smart device until one month after the IEP. Again, there is no statutory requirement for perfect adherence to an IEP. Student must demonstrate a material failure to implement the provision of the IEP. Student did not do so. Once Student obtained the Alpha Smart, she failed to use it on a regular basis, and finally ceased using it altogether. Student introduced no further evidence to indicate Student suffered any deprivation of educational benefit. For the same reasons set forth in Factual Finding 93, Student presented insufficient evidence to substantiate a denial of FAPE.

DID THE DISTRICT FAIL TO PROVIDE GOALS AND SERVICES FOR STUDENT IN THE AREAS OF RECEPTIVE LANGUAGE, AUDITORY PROCESSING, MATH AND MENTAL HEALTH IN THE 2002-2003, 2003-2004, 2004- 2005, AND 2005-2006 SCHOOL YEARS?

95. Under California law, a student may be determined to have a specific learning disability if the student has a disorder in one or more basic processes and has a severe discrepancy between intellectual ability and achievement in one or more academic area. In developing the IEP for such a student, the IEP team must consider the strengths of the student, the concerns of the parent, the results of the most recent assessments, and the academic, developmental, and functional needs of the student. A substantive FAPE challenge questions whether the IEP was designed to meet the unique needs of the

¹⁸ Report No. S-0514-04/05, dated January 27, 2005.

student and whether the IEP was reasonably calculated to provide the student with educational benefit.

2002-2003 SCHOOL YEAR (8TH GRADE):

96. A statement of annual goals must be crafted to meet the student's unique needs.

97. Student contends that the District failed to create goals for Student in the area of language processing, auditory processing, and mental health. Further many of those needs had long been identified, yet the District failed to make any determination as to what services she required to make meaningful educational progress.

98. The September 24, 2002 IEP team determined that Student still demonstrated a severe discrepancy between her ability and achievement in the area of math. Student also demonstrated a processing disorder in auditory memory and attention. The team noted that Student's comprehension and reading level remained below grade level. She had trouble understanding math concepts. Student required the support of the Resource Specialist Program (RSP).

99. The IEP team determined that Student had difficulty answering questions from core textbooks. She comprehended better when questions were read to her. The IEP team created a goal for Student to read, comprehend and answer questions. Mother consented to this goal.

100. The IEP must be evaluated in terms of what was objectively reasonable at the time.

101. The IEP team did not create specific goals or services in the area of receptive language. The ATOPS administered by Mr. Walker in Factual Finding 13, indicated Student's receptive and processing abilities were above average. Based upon the information available to the IEP team at the time, Student did not require specific goals or services in the area of receptive language. Further, the District provided Student with

special accommodations, such as reading questions aloud, and obtaining copies of teacher class notes, along with RSP services.

102. Student's grades in her general education classes continued to drop. She still had difficulties understanding and turning in assignments. The subsequent Newport assessment, described in Factual Finding 14, indicated that Student had mild receptive difficulties which might be the result of auditory comprehension difficulties. Another IEP meeting was convened on December 9, 2002, to discuss Student's declining grades. Mother and teachers reported that while Student read well, she often had difficulty understanding. This, coupled with her failing to complete class assignments and turn in homework, indicated that Student needed a higher level of support. The IEP team agreed with Mother, and placed Student in Special Day Classes (SDC), which provided Student with a smaller classroom environment and more specialized teaching techniques. The District acted appropriately in changing Student's placement.

2003-2004 SCHOOL YEAR (9TH GRADE):

103. The IEP team met on September 23, 2003, for Student's annual IEP. Again the IEP team determined that Student had a learning disability in the area of math, as well as a processing disorder in auditory memory and attention. The IEP team determined that Student's placement would remain in SDC where she could receive more hands on attention from teachers. The IEP team also crafted significant accommodations for Student to provide more time for tests, modifications in content, pacing, and methods of teaching, and access to counselors.

104. The IEP team did not provide any reading goals, nor did the IEP documents indicate whether Student had met her prior reading goals. Pursuant to Factual Finding 15, Cindy Stevens had reassessed Student in the area of speech and language. Ms. Stevens concluded that Student's receptive language and comprehension skills were in the low average range, which commensurated with her cognitive abilities. Candy Gomez, Student's

SDC teacher in the 9th through 11th grade, indicated that Student succeeded in her classes in the 9th grade. Further, Student read grade level text and understood what she had read. Ms. Gomez stated that this was evident from Student's participation in class.

105. The IEP team did not provide any specific receptive language goals. The Newport assessment and Ms. Stevens's assessment acknowledged Student's receptive language difficulties, however, as Ms. Stevens had indicated, this type of deficit may be best managed in the classroom, where and when the problem occurs. Further, the prior assessments generally supported a belief that Student's receptive deficits were based on an audio processing disorder. Although Student had not yet been formally tested or diagnosed with ADP at this time, Ms. Brewster's testimony and Providence information provides insight as to acceptable remediation available to Student at this time. Specifically, a management plan for ADP generally consists of a variety of accommodations and teaching strategies. The IEP team had placed Student in the SDC setting, and provided Student with appropriate accommodations. The accommodations provided to Student appropriately dealt with her receptive language difficulties, therefore Student required no other services.

2004-2005 SCHOOL YEAR (10TH GRADE):

106. The IEP team met on October 12, 2004. Again, Student demonstrated a processing disorder in auditory memory and attention. She remained LD in math skills.

107. The IEP team crafted a goal for Student covering mathematical reasoning in algebra. The IEP team provided Student with the same accommodations as in 2003, all designed to address Student's auditory processing and attention deficits. Again, the accommodations provided to Student were appropriate to address Student's APD, and Student required no additional goals or services.

2005-2006 SCHOOL YEAR (11TH GRADE):

108. On September 9, 2005, the District held Student's annual IEP meeting. In this IEP, the team noted that Student qualified as LD in mathematics. Student continued to exhibit processing deficits in the area of auditory perception and attention. This year, Dr. Higgins attended the IEP to present the results of his FAA. The IEP team determined that Student experienced significant emotional conditions which manifested through depression and difficulty maintaining satisfactory interpersonal relationships. As a result, Student additionally qualified for special education as emotionally disturbed, and the District provided Student with small group counseling services two times per month.

109. A review of Student's present levels of performance indicated she continued to have difficulties in math and still had difficulty turning in her assignments on time. Student did, however, show much improvement in her social/emotional status, and had improved her communication skills. Four of Student's teachers were present at the IEP. Ms. Gomez, Student's history teacher, reported that Student was doing well in her class, was more positive, and participated more in class. Mr. LaGrosse, Student's math teacher, indicated that Student was cooperative and completing her assignments. Student's driver's education teacher indicated Student asked questions when she did not understand. Student's science teacher indicated that Student was doing well in class. None of the teachers noted oppositional behavior in class.

110. The IEP team created a new goal to address Student's difficulty with complying with requests and instructions given by teachers. Another goal addressed Student's difficulty in turning in assignments and homework. The IEP acknowledged presentation of the Providence auditory processing assessment and reflected accommodations consistent with Ms. Brewster's recommendations.

111. Student's behavior support plan (BSP) addressed several areas of concern. The BSP acknowledged that student had weak memory skills. When work appears difficult

or extensive, Student would not do the work. The BSP created an intervention in which the teaching staff was instructed to break longer assignments into smaller pieces and check for comprehension of instructions. The BSP further instructed teachers to keep instructions concrete and have Student paraphrase if possible. The BSP also provided Student with a time away period when emotionally unsettled.

112. Student's IEP contained goals and services to meet all of her unique needs at the time. Student contends that there were no goals for receptive language, reading or auditory processing. The evidence suggests otherwise. Student's assessments did not reflect Student's reading skills as a learning disability. The IEP notes contain reports from Student's teachers, none of which indicated a need for reading remediation. Many of Student's receptive skills are referenced in the Providence report. The Providence assessment delineated Student's APD and made recommendations which were generally adopted by the IEP and BSP. The IEP team did not provide Student with reading and receptive language goals because the information available to the IEP team did not support or require those goals. The IEP team did provide goals and services in auditory processing and mental health.

DID THE DISTRICT FAIL TO PROVIDE READING SERVICES TO STUDENT?

113. Student's primary contention throughout this matter relates to Mother's belief that the District failed to heed the warning signals in its own assessments, the IEEs, and Student's academic history which indicated that Student has receptive deficits which significantly impaired Student's reading comprehension. As a result, Student cannot read on grade level, and now, at age 18, is ill prepared to obtain employment or even function outside her home. The underlying assumption that Student required comprehensive reading assistance is pervasive in all of Student's other arguments and contentions.

114. The testimony of Ms. Engalla and Ms. Brewster, along with the written information provided by Providence, is most convincing. According to Ms. Brewster,

management of an auditory processing deficit must be individually tailored to the specific child. Generally, management plans consist of a variety of accommodations and teaching strategies. Citing a 2003 California Department of Education position paper¹⁹ in part, Providence reported that "There is minimal evidence of valid and reliable studies to support 'therapeutic interventions' for auditory processing disorders...such treatments must be viewed as experimental and are not appropriately included in a student's IEP...Various accommodations and educational strategies, such as preferential seating and use of visual supports are often successful for students with processing deficits." Ms. Engalla provided Mother and the IEP team with a generalized strategy sheet, *Remediation for the Child with Auditory Processing Disorder*, which provided 15 suggestions for dealing with the disorder, all of which described types of accommodations and teaching. None of the suggestions recommended a comprehensive reading program.

115. It is uncontroverted that the LMB program or similar reading services would have greatly benefited Student. As Ms. Zakaryan indicated, the purpose of LMB is to maximize potential. Many of LMB's clients are gifted rather than challenged readers. Maximizing benefit from a program or service, however, is not the standard for determining FAPE. Rather, the focus, according to *Rowley*, lies in whether the service is necessary to allow Student to obtain some benefit from her education. A district is not required to place a student in a program preferred by a parent, even if that program or service will result in greater educational benefit to the student. De minimus benefit on the other hand, is insufficient to provide a Student a FAPE.

116. A student may derive benefit from her education when she improves in some areas even though she fails to improve in others. A showing of progress does not require a rise in relationship to one's peers.

¹⁹ California Department of Education Central Auditory Processing Disorder (CAPD) Position Statement, 2003.

117. Student's inconsistent grades are not sufficient to conclude that Student required reading services. The evidence does not support a finding that Student's IEPs were deficient or that Student was unable to access her education and obtain some educational benefit. Although Mother emphatically disagreed, all of Student's teachers who testified indicated that in their classes, Student read grade level text, understood it, and could appropriately participate in classroom discussions. Georgina Whyte, Student's RSP teacher indicated that Student did not always turn in her assignments, but when she did, it was quality work, on grade level, and correct. Mr. LaGrass, Student's 8th, 10th, and 11th grade math teacher, indicated that Student worked independently in class and completed grade level work using the standard, general education textbook. Mr. Walker, Student's SLP for five years, indicated Student enjoyed reading aloud and was expressive when doing so. Ms. Gomez, Student's teacher in the 9th, 10th, and 11th grades, reported that Student succeeded in her classes. Student read and comprehended grade level text, participated in class, and was capable of 'B' work. Even more convincing was Ladell Sill, Student's teacher since the 9th grade. Ms. Sill was Student's case manager and also had Student in her English Arts Lab in the 11th grade. The District placed Student in the English Lab to prepare her to pass the CAHSEE. This lab was not intended to primarily focus on Student's reading skills, but rather was intended to remediate her study skills. Ms. Sill reported that Student could read and comprehend grade level materials. She based her opinion upon teacher made tests of the materials covered, verification of Student's comprehension and recall, and Student's responses to her assignments.

118. Admittedly, Student's grades were highly unacceptable a great deal of her high school years. The grades alone, however, are misleading. All parties concurred that Student did not turn in her homework and assignments. Clearly, had student simply turned in the assignments, her grades would have improved greatly. This is further evidenced by Student's ability to significantly raise her grades in a short period of time in order to qualify for CIF swimming competitions.

119. The District provided goals and services to Student throughout her high school years which were designed to provide educational benefit to Student, and Student obtained substantially more than de minimus benefit from them. The District was not required to maximize Student's potential, and, therefore, had no obligation to provide Student with reading goals and services.

DID THE DISTRICT FAIL TO PROVIDE STUDENT PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT (LRE) IN THE 2005-2006 SCHOOL YEAR?

120. School districts are required to provide a special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily.

121. Student contends that since the SDCs did not provide Student with meaningful educational progress, it was not the least restrictive environment for Student.

122. Student's SDCs provided smaller classroom and fewer students in each class than found in the general education setting. The smaller classroom environment itself minimized distractions for students. The SDCs provided grade level, general education curriculum. The teaching philosophy in SDC, however, is intended to provide students with more specialized and hands on teaching strategies. Teaching is slower paced, core curriculum is taught in smaller segments. Students are provided modifications and accommodations to better access information. The SDC provides remedial skills in areas of defined weakness, and more one-to-one assistance than found in general education classrooms.

123. Based upon the information provided by Providence contained in Factual Findings 41, 42, and 43, Student met the criteria for APD. The APD affected Student's receptive language skills. According to Student's experts, Ms. Engalla and Ms. Brewster,

remediation of APD is best served by providing accommodations and modifying teaching strategies. In addition, all parties acknowledged Student's ADHD, and inability to consistently complete or turn in homework. Although Student's teachers agreed that she could perform at grade level, they also agreed that she needed a slower pace to break down and understand new materials. Student would occasionally need prompting to keep on task, and needed review as reinforcement of information. All of these factors support a finding that the SDC is the LRE for Student.

124. Student's evidence did not place the LRE at issue. Mother's disagreement with the 2005 IEP related to services only. She agreed to placement in the SDC. Mother aggressively advocated Student's placement in SDC beginning in 2001. Each year thereafter Mother agreed with Student's placement in SDC. Further, Student presented no evidence to suggest an appropriate alternate placement or refute the appropriateness of the SDC placement in the 2005 IEP.

IS STUDENT ENTITLED TO REIMBURSEMENT FOR AN INDEPENDENT EDUCATIONAL EVALUATION (IEE)?

125. When a parent disagrees with an assessment obtained by a district, the parent has the right to an independent educational evaluation (IEE) from a qualified specialist at public expense. If a parent requests an IEE, the school district must, without unnecessary delay, either initiate a due process hearing to show that its assessment is appropriate, or ensure that an IEE is provided at public expense.

126. Mother requested an IEE from Lindamood-Bell at the September 21, 2005 IEP meeting. The District did not respond to Mother's request. It neither authorized the IEE, nor provided Mother with a written denial of her request. Further, the District failed to initiate a due process hearing to validate its own assessments. As a result, Student independently obtained the IEE from Lindamood-Bell in April 2006, which was presented to the District for consideration. Only after presented with the IEE did the District notify

Student that it would not reimburse the cost of the IEE. Student is entitled to reimbursement for the IEE from Lindamood-Bell.

IS STUDENT ENTITLED TO COMPENSATORY RELIEF?

127. The September 21, 2005 IEP was not adequate to meet Student's unique needs during her junior year of high school. The deficiencies in the ITP, as described in Factual Findings 78, 80, and 81, are not harmless error as the District's failure to properly develop the ITP prevented Student from benefiting from her education, resulting in a denial of FAPE.

128. Based upon the inadequacies of the ITP, Student has requested compensatory education in the form of a reading program from Lindamood Bell. Student's contention that a reading program is appropriate to remediate a transition plan violation is not persuasive. Although the District is required to provide a FAPE in transition services, it is not required to provide more services on a higher level than it is required to provide in the educational portion of Student's IEP. As previously discussed, the District is not required to provide Student with a reading program in order to meet the *Rowley* standards for educational opportunities. It is Student's burden to prove not only that she was denied a specific service but also to prove the basis for any specific requested compensatory relief.

129. Nonetheless, the ITP was inadequate, and the District owes Student some type of compensatory services. This, however, is complicated by Student's move out of state, and the lack of cooperation in this matter exhibited by Student's current school district.²⁰ Therefore, the District must offer Student an age-appropriate privately funded

²⁰ The Portage Community School District in Wisconsin, failed to cooperate in this matter. Counsel had difficulty obtaining Student's current school records. Student's teachers refused to testify by telephone, even though several were available and initially

vocational assessment for Student's use in her current school setting. Additionally, Student is entitled to 10 hours of one-to-one tutoring addressing how to research vocational schools, colleges, careers and employment, as well as how to contact college disability advisors, and how to take tests. If the current school district is currently providing such services to Student or has staff available to do so, that person may provide these services to Student. If Student's current district refuses to cooperate with the District, or if the District wishes to contract with an outside consultant to provide these services to Student, then the District may select a non-District employee in Wisconsin to assist Student, whose employment rate does not exceed the District's current California contractual rates for one-to-one tutoring services.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or the Act) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA.

2. A FAPE is defined as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined as specially designed instruction at no cost to parents, to meet the unique needs of a child with a disability. (20

answered the telephone.

U.S.C. § 1401(29); Ed. Code, § 56031.) Special education related services include developmental, corrective, and supportive services, such as speech-language pathology services and occupational therapy, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

3. In *Board of Education of the Hendrick Hudson Central School District, et. al. 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. (*Rowley*, 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 “sufficient to confer some educational benefit” upon the child. (*Rowley*, at pp. 200, 203-204.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. School districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Rowley*, at p. 200.)

4. A student derives benefit under *Rowley* when he improves in some areas even though he fails to improve in others. (*Fort Zumwalt School District v. Clynes* (8th Cir. 1997) 119 F.3d 607, 613.) He may derive benefit while passing in four courses and flunking in two. (*Cypress-Fairbanks Independent School District v. Michael F.* (S.D.Tex. 1995) 931 F.Supp. 474, 481.) A showing of progress does not require that a D student become a C

student and thus rise in relation to his peers. Progress may be found even when a student's scores remain severely depressed in terms of percentile ranking and age equivalence, as long as some progress toward some goals can be shown. (*Coale v. Delaware Department of Education*. (D.Del. 2001) 162 F.Supp.2d 316, 328.)

5. De minimus benefit or trivial advancement, however is insufficient to satisfy the *Rowley* standard of "some" benefit. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d at p.130; *Doe v. Smith* (6th Cir. 1989) 879 F.2d 1340, 1341.) A child's academic progress must be viewed in light of the limitations imposed by his or her disability and must be gauged in relation to the child's potential. (*Mrs. B v. Milford Board of Education* (2d Cir. 1997) 103 F.3 1114, 1121.)

6. Before any action is taken with respect to the initial placement of an individual with exceptional needs, a district is required to conduct a full and individual initial assessment of the student. (20 U.S.C. § 1414(a)(1); Ed. Code, § 56320.) Thereafter, special education students must be reassessed every three years or more frequently, if conditions warrant, or if the pupil's parent or teacher requests a new assessment and that a new IEP be developed. (Ed. Code, § 56381.) In conducting the assessment or reassessment, a district is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent that may assist in determining whether the child is a child with a disability and matters relating to the child's IEP. (20 U.S.C. § 1414(b)(2)(A).)

7. A district may not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B).) A district is required to use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors. (20 U.S.C. § 1414(b)(2)(C).)

8. California Education Code section 56320, subdivision (g), requires that the assessment be conducted by persons knowledgeable of the suspected disability.

Moreover, psychological assessments, including individually administered tests of intellectual or emotional functioning must be administered by a credentialed school psychologist. (Ed. Code, §§ 56320, subd. (b)(3), 56324.) Assessments must be conducted by persons competent to perform assessments, as determined by the school district, county office, or special education local plan. (Ed. Code, § 56322.)

9. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School District*. (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).)

10. When a parent disagrees with an assessment obtained by a district, the parent has the right to an independent educational evaluation (IEE) from a qualified specialist at public expense unless the district demonstrates at a due process hearing that its assessment was appropriate. (Ed. Code, §§ 56329(b), (c), 56506 subd. (c); 34 C.F.R. § 300.502.) If a parent requests an IEE at public expense, a district must, without unnecessary delay, either initiate a due process hearing to show that its assessment is appropriate, or ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing that the assessment obtained by the parent did not meet educational agency criteria. (34 C.F.R. § 300.502, subd. (b)(2); (*Pajaro Valley Unified School District v. J.S.* (N.D. Cal. 2006) 2006 U.S. Dist. Lexis 90840; *Norton v. Orinda Union School District* (9th Cir. 1999) 1999 U.S.App. Lexis 3121.)

11. California law permits two methods for determining a specific learning disability: (1) the severe discrepancy method; and 2) the "response to intervention" (RTI) method. (Ed. Code, § 56337.) The severe discrepancy method is described in California Code of Regulations, title 5, section 3030, subdivision (j). Under that provision, a child has

a specific learning disability if the child has a disorder in one or more basic processes (such as auditory or visual processing) and “has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in section 56337, subdivision (a) of the Education Code.” Specific learning disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (34 C.F.R. § 300.8(c)(10)(ii); Ed. Code, § 56337, subd. (a).)

12. An IEP is a written document which details the student’s current levels of academic and functional performance, provides a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with non-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).)

13. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is “a snapshot, not a retrospective.” (*Id.* at p. 1149.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Id.*) The focus is on the placement offered by the school district; not on the alternative preferred by the parents. (*Gregory K. v. Longview, supra*, 811 F.2d at p. 1314.)

14. In developing the IEP, the IEP team shall consider the strengths of the student, the concerns of the parents for enhancing the student’s education, the result of the most recent assessment of the student, and the academic, developmental, and functional needs of the student. (20 U. S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.346(a)(2003).)

15. A statement of measurable annual goals must be crafted to meet the

student's unique needs that result from his/her individual disability. These goals are designed to enable the student to be involved in and make progress in the general curriculum as well as meet each of the other educational needs resulting from student's disability. (Ed. Code, § 56345, subds. (a)(2)(A),(B); See also 34 C.F.R. § 300.320(a)(2006).) Annual goals are statements that describe what a special education student can reasonably be expected to accomplish within a twelve month period in his/her special education program.

16. A student's progress must be measured and reported to the parent. States must establish and maintain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W. G., et. al. v. Board of Trustees of Target Range School Districts*. (9th Cir. 1992) 960 F.2d 1479 at 1483.) Citing *Rowley*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but indicated that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at p.1484.) While the required elements of the IEP further important policies, "rigid 'adherence to the laundry list of items [required in the IEP]' is not paramount." (*Ibid.*) Further, title 34 of the Code of Federal Regulations, part 300.347, subdivision (a)(7)(ii) states that the IEP shall include a statement of how the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-disabled children's progress.

17. A school district must insure that (1) an IEP is in effect before special education and related services are provided to an eligible student and is implemented as soon a possible following the IEP meeting; (2) the student's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and (3) each teacher and provider is informed of his/her specific responsibilities related to implementing the student's IEP as well as the specific accommodations, modifications, and supports that

must be provided for the student in accordance with the IEP. (34 C.F.R. § 300.342(b)(2003); Ed Code, § 56347.)

18. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denial of a free appropriate public education. When a school district does not perform exactly as called for by an IEP, the district does not violate the IDEA, unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when the services provided to a disabled child fall significantly short of those required by the IEP. The material standard does not require that the child suffer demonstrable educational harm in order to prevail. (*James Van Duyn v. Baker School District 5J* (9th Cir. 2007) 481 F.3d 770, [U.S.App. Lexis 7606].)

19. Districts are also required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.)

20. Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE 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); Ed. Code, § 56505, subd. (f)(2).)

21. A parent has meaningfully participated in the development of an IEP when he is informed of his child's problems, attends the IEP meeting, expresses his disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox*

County Schools (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.*, supra, 993 F.2d 1031, 1036.)

22. For each student, beginning with the first IEP to be in effect when the student is 16,²¹ the IEP must include as statement of the transition service needs of the student. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) Prior to July 1, 2005, a student’s IEP was required to contain “a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program)” and “beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.” (Former 20 U.S.C. § 1414 (d)(1)(A)(vii)(I) & (II).)

23. The reauthorized IDEA, effective July 1, 2005, defines “transition services” as, a coordinated set of activities for a child with a disability that:

- (A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post- school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and
- (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when

²¹ Prior to July 1, 2005, the IDEA required the IEP to address transition services beginning at age 14, or younger, if the IEP team deemed it appropriate.

appropriate, acquisition of daily living skills and functional vocational evaluation. (20 U.S.C. § 1401(34).)

The reauthorized IDEA also requires that the IEP include a statement of measurable goals based on transition assessments and an outline of the services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).)

24. The failure of an IEP team to comply with the requirements for transition planning is a procedural violation of the IDEA. (*Virginia S., et. al. v. Department of Education, State of Hawaii* (D. Ha., January 8, 2007, Civ. No. 06-00128) 2007 U.S. Dist. Lexis 1518.) However, the failure to properly formulate a transition plan warrants relief only upon a showing of a loss of educational opportunity or a denial of a FAPE. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276.) A transition plan that fails to address the student's unique needs or is not reasonably calculated to provide the student with an educational benefit denies the student a FAPE.

25. A district may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. It has long been recognized that equitable considerations may be considered when fashioning relief for violations of the IDEA. (*Florence County School District Four v. Carter* (1993) 510 U.S. 7, 16; *Parents of Student W. v. Puyallup School District No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) Compensatory education is an equitable remedy; it is not a contractual remedy. (*Id.* at p.1497.) The law does not require that day-for-day compensation be awarded for time missed. (*Ibid.*) Relief is appropriate that is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*)

26. An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) When determining an award of compensatory education, the inquiry must be fact-specific. (*Ibid.*) The award must be reasonably calculated to provide the educational benefits that likely would have accrued

from special education services the school district should have supplied in the first place. (*Ibid.*)

27. Generally a district's obligation to provide an eligible special education student with FAPE terminates when the Student graduates from high school. (*Student W. v. Puyallup School Dist., supra*, 31 F. 3d 1489, 1497.) Relief, however, may be provided even though the student is no longer eligible for special education services. (*Capistrano Unified School District v. Wartenberg* (9th Cir. 1995) 59 F.3d 884, 890; *Student W. v. Puyallup School Dist., supra*, 31 F.3d 1496.) A student's graduation does not relieve a district's obligation to provide compensatory education to remediate the harm caused to student by the district's failure to provide student with FAPE before graduation. Parent and student may seek reimbursement for expenditures caused by a district's failure to provide FAPE. (*Department of Education, State of Hawaii v. Cari Rae S.* (D. Ha. 2001) 158 F.Supp.2d 1190, 1196, n.3.)

28. An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia, supra*, at p. 524.) When determining an award of compensatory education, the inquiry must be fact-specific. (*Ibid.*) The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Ibid.*)

29. Under *Schaffer v. Weast* (2005) 546 U.S. 49, 126 S.Ct. 528, the party who files the request for due process has the burden of persuasion at the due process hearing. Student filed both due process requests and bears the burden of persuasion.

DETERMINATION OF ISSUES

DID THE DISTRICT FAIL TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY IN THE 2001-2002, 2002-2003, 2003-2004, 2004-2005 AND 2005-2006 SCHOOL YEARS:

30. Pursuant to Legal Conclusions 6 and 7, a school district is required to reassess a student every three years, or more frequently if conditions warrant. The District is required to assess the student in all areas of suspected disability, using a variety of assessment tools and strategies to gather relevant functional, developmental and academic information. Based upon Factual Findings 7 and 9, in the applicable part of the 2002-2002 school year, there were no requests to reassess Student. The District did not fail to assess Student in all areas of suspected disability in the 2001-2002 school year.

31. Pursuant to Legal Conclusions 6 and 7, and Factual Finding, 12, the District appropriately assessed Student in the 2002-2003 school year. The District reassessed Student in the area of speech and language. The District's SLP tested Student's articulation as well as her receptive, processing, and expressive language skills. Although Student disagreed with the conclusions drawn from the assessment, the assessment itself did not fail to appropriately assess Student based upon what was known of Student at the time. Further, pursuant to Factual Findings 14, 15, and 16, after receiving Student's IEE, the District conducted another speech and language assessment with further testing and incorporated all prior 2002 assessment results in its report. The District did not fail to assess in all areas of suspected disability.

32. Pursuant Legal Conclusions 6 and 7, and Factual Findings 18 and 19, the District appropriately assessed Student in the 2003-2004 school year. The District again assessed Student in the area of articulation. No further educational assessments were requested or required. Pursuant to Factual Findings 22 and 23, the District knew of Student's diagnoses of bipolar disorder, ADHD and ODD. Student's parent, doctor and

therapist all indicated that Student's conditions were controlled by medication. Further, Student rarely exhibited behavior suggesting further assessment in these areas. In March 2004, Student engaged in "cutting." This behavior was investigated by the District. After discussion with Mother, Student and Student's therapist, the District determined no further intervention or assessment was needed. The District did not fail to assess Student in all areas of suspected disability.

33. Pursuant to Factual Findings 26-31, in 2004, the District conducted Student's triennial psychoeducational assessment. Mr. Avalos based the assessment on Student's educational records, information obtained from Mother, Student's teachers and Student's therapist. Student was observed in the classroom. Mr. Avalos administered a variety of tests which measured Student's cognitive abilities, reading, writing and mathematical skills, as well as rated her social/emotional behavior and motor skills. The assessment adequately assessed Student's auditory processing, and determined her strengths and weaknesses. The 2005 assessment met the requirements of Legal Conclusions 6, 7, and 8. Further, pursuant to Factual Findings 37-39, the District assessed Student's social/emotional behavior and conducted an FAA. Pursuant to Factual Finding 108 and 111, the FAA addressed several areas of Student's educational deficits. The District did not fail to assess Student in all areas of suspected disability in the 2004-2005 school year.

34. Pursuant to Legal Conclusions 6 and 7, and Factual Finding 47, the District conducted an additional psychoeducational assessment to measure Student's nonverbal intelligence. Pursuant to Factual Finding 52, in the 11th grade, Student's stress levels and negative behavior began to increase. The District requested an AB3632 mental health assessment. The District did not fail to assess Student in all areas of suspected disability in the 2005-2006 school year.

DID THE DISTRICT FAIL TO ADDRESS AND DOCUMENT STUDENT'S PROGRESS ON HER ANNUAL GOALS IN THE 2004-2005 AND THE 2005-2006 SCHOOL YEARS?

35. Pursuant to Legal Conclusions 15 and 16, a student's progress must be measured and reported to the parent. Based upon Factual Finding 57, the 2004 IEP did not specifically document or report Student's progress towards reaching her goal in math. Further, the IEP contained no statement of how Mother would be informed of Student's progress. Certainly a more specified IEP would be preferred; however, rigid adherence to the laundry list of items required in an IEP is not required. Pursuant to Legal Conclusion 19, a procedural violation of the IEP requirements constitute a denial of FAPE only where the violation impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process or caused a deprivation of educational benefits. Pursuant to Factual Findings 59 and 62-65, the evidence does not support a finding of denial of FAPE.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH AN APPROPRIATE TRANSITION PLAN IN THE 2003-2004, 2004-2005, AND 2005-2006 SCHOOL YEARS?

36. Based upon Legal Conclusion 20, a school district is required to provide a special education student with a transition plan beginning with the first IEP to be in effect when the student is 14 years of age. Pursuant to Factual Finding 69, in 2002, the District failed to do so. Again, as defined in Legal Conclusion 19, a procedural violation of the IDEA does not deny a FAPE unless it significantly impedes a parent's opportunity to participate in the decision making process or denies the Student educational benefit. The District's failure to have an ITP in effect at age 14 did not deny a FAPE. Based upon Legal Conclusion 20, and Factual Finding 70, the District provided an adequate ITP for Student which included goals for Student and requested a transition assessment which was contained in the IEP.

37. Based upon Legal Conclusion 22, the reauthorized IDEA defined transition

services to require a focus on improving the academic and functional achievement of the student to facilitate the student's movement from school to post-school activities. Based upon Factual Findings 80-82, both Mother and the IEP team had requested a transition assessment. Pursuant to Factual Finding 81, the District did not provide this assessment. Pursuant to Legal Conclusion 19, a procedural violation is a denial of a FAPE if it deprived the student of an educational opportunity. Based upon Factual Findings 80-82, the District's failure to provide Student with a transition assessment by the 11th grade, deprived Student of access to information she would surely need in order to function after graduation. The District knew, based upon her unique needs, Student would need specific guidance to pursue her post-graduation career or education. With no transition assessment, the District did not provide Student with sufficient goals and objectives or information for her to pursue on her own. The District failed to provide Student with an appropriate ITP in 2005, which resulted in a denial of FAPE.

DID THE DISTRICT FAIL TO IMPLEMENT PORTIONS OF STUDENT'S 2002 IEP?

38. Based upon Factual Findings 87 and 89, the District failed to comply with portions of Student's 2002 IEP, by failing to implement the modifications contained in the IEP or provide Student's teachers with the IEP during the first three weeks of school. Pursuant to Legal Conclusions 16 and 17, there is no requirement for perfect adherence to an IEP, and any violation must represent a material failure. Such failure occurs where the services provided to the student fall significantly short of those required in the IEP. Pursuant to Factual Finding 90-93, the evidence presented failed to sustain Student's contention that the compliance failures resulted in any deprivation of educational benefit to Student.

39. Based upon Factual Finding 94, in 2004, the District failed to provide Student with an Alpha Smart device within the first month of school. Based upon Legal Conclusions 16 and 17, as stated in Issue Determination 39, above, Student is required to

show a material failure of the IEP as a result of the non-compliance. The only additional evidence presented suggested that Student failed to utilize the Alpha Smart once she received it. Student failed to establish that Student was deprived of any educational benefit.

DID THE DISTRICT FAIL TO PROVIDE SERVICES AND GOALS FOR STUDENT IN THE AREAS OF RECEPTIVE LANGUAGE, AUDITORY PROCESSING, READING, MATH, AND MENTAL HEALTH IN THE 2002-2003, 2003- 2004, AND 2004-2005 SCHOOL YEARS?

40. Pursuant to Legal Conclusions 12, 15, and 16, and Factual Findings 98-101, the 2002 IEP provided Student with measurable goals for reading and math. The IEP did not create goals for receptive and processing skills, as Student's speech and language assessment did not support any needs in those areas. Further, when it was determined that Student needed a higher level of support to benefit from her education, the IEP team reconvened and changed Student's placement to SDC. The District did not fail to provide appropriate goals and services in the 2002-2003 school year.

41. Pursuant to Legal Conclusions 12, 15, and 16, and Factual Findings 103-105, the 2003 IEP contained appropriate goals for Student. The IEP contained specific goals for algebra. In addressing Student's processing order in auditory memory and attention, the IEP team maintained Student's placement in SDC and provided Student with accommodations. Although the IEP contained no specific receptive language goal, the IEP team appropriately handled Student's APD. The IEP contained no reading goals. Pursuant to Factual Finding 104, Student's skills were commensurate with her cognitive abilities. Further, Student's teacher indicated Student read grade level text and understood what she read. The District did not fail to provide appropriate goals and services in the 2003-2004 school year.

42. Pursuant to Legal Conclusions 12, 15, and 16, and Factual Finding 107, the IEP team provided Student with a clear goal in algebra and adequate accommodations to

address Student's APD. The District did not fail to provide appropriate goals and services in the 2004-2005 school year.

43. Pursuant to Legal Conclusions 12, 15, and 16, and Factual Findings 108-112, in addition to Student's pre-existing disabilities, the IEP team found that Student also qualified for services as emotionally disturbed. The District added counseling sessions to Student's IEP. Further, pursuant to Factual Finding 111, the District created a BSP which addressed Student's weak memory skills, and avoidance issues. The BSP contained teaching strategies to deal with these areas. The District did not fail to provide appropriate goals and services in the 2005-2006 school year.

44. Based upon Legal Conclusions 3, 4, and 5, the challenge to the IEP lies in whether the IEP was reasonably calculated to enable the student to receive some educational benefit. If the IEP is designed to address a student's unique educational needs and is reasonably calculated to provide some educational benefit, then the District has provided a FAPE, regardless of what services the parent would prefer, even if the preferred program would result in greater educational benefit. Student's contentions that the goals created for Student failed to allow her to make meaningful progress in her education are unfounded. A showing of progress or educational benefit does not require a rise in relation to one's peers. Based upon Factual Finding 117, Student's teachers all agreed that Student was able to read at grade level and could participate in class. Each teacher indicated that Student's grades would significantly improve if she would merely turn in her assignments and homework. Student exhibited the ability to significantly improve when she was seeking CIF eligibility. The goals and services created by the District provided Student with a meaningful education. As stated in Factual Finding 115, the LMB program would have been beneficial to Student, however, the District had no obligation to maximize services or provide Student with more than the legal requirement of a basic floor of opportunity.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

45. Pursuant to Legal Conclusion 18, a school district is required to provide a student with placement in the least restrictive environment. Pursuant to Factual Findings 122-124, the SDC represented the smaller, more controlled environment recommended for Student. Further, Mother requested that Student be placed in SDC and consented to SDC placement in each IEP. Both of Mother's due process requests have been based on a disagreement over assessments and the resulting goals and services provided to Student. Placement has not been contested, and the issue should not have been pursued at hearing. The District did not fail to place Student in the least restrictive educational environment.

IS STUDENT ENTITLED TO REIMBURSEMENT FOR THE LMB IEE?

46. Based upon Factual Finding 126, at the September 2005 IEP, Mother requested that the District provide an IEE by Lindamood Bell at public expense. Pursuant to Legal Conclusion 10, a school district must respond to a request for IEE, by either providing the IEE as requested or seeking a due process hearing to determine its assessment is appropriate. The District did neither. As a result, Student is entitled to reimbursement for her IEE from Lindamood Bell.

IS STUDENT ENTITLED TO COMPENSATORY EDUCATION?

47. Pursuant to Issue Determination 38, the 2005 ITP did adequately meet Student's unique needs during her junior year of high school. The deficiencies in the ITP, as described in Factual Findings 78, and 80-82, harmed Student. The District's failure to properly develop the ITP prevented Student from benefiting from her education, resulting in a denial of FAPE.

48. Based upon the inadequacies of the ITP, Student has requested

compensatory education in the form of a reading program from Lindamood-Bell. Student's contention that a reading program is appropriate to remediate a transition plan violation is not persuasive. Although the District is required to provide a FAPE in transition services, it is not required to provide more services on a higher level than it is required to provide in the educational portion of Student's IEP. As previously discussed, the District is not required to provide Student with a reading program in order to meet the *Rowley* standards for educational opportunities. Based upon Legal Conclusion 25, it is Student's burden to prove not only that she was denied a specific service but also to prove the basis for any specific requested compensatory relief. The evidence failed to support a finding that the ITP violations required compensatory relief in the form of comprehensive reading services. Nonetheless, the 2004 and 2005 ITPs are inadequate, and the District owes Student compensatory services as described in Factual Finding 128.

ORDER

1. The District is ordered to reimburse Student for the IEE prepared by Lindamood-Bell.
2. The District is ordered to offer Student an age-appropriate privately funded vocational assessment for Student's use in her current school setting. Additionally, Student is entitled to 10 hours of one-to-one tutoring addressing how to research vocational schools, colleges, careers and employment, as well as how to contact college disability advisors, and how to take tests. If the current school district is currently providing such services to Student or has staff available to do so, that person may provided these services to Student. If Student's current district refuses to cooperate with the District, or if the District wishes to contract with an outside consultant to provide these services to Student, then the District may select a non-District employee in Wisconsin to assist Student, whose employment rate does not exceed the District's current California contractual rates for one-to-one tutoring services.

3. The District prevails on all other issues. Additional compensatory education 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.

Student prevailed on two issues, specifically:

1. The District failed to provide Student with an appropriate transition plan in the 2004-2005, and 2005-2006 school years.
2. Student is entitled to reimbursement for the Lindamood-Bell IEE.

The District prevailed on all other issues, specifically:

1. The District did not fail to assess Student in all areas of suspected disability in the 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2005-2006 school years.
2. The District did not fail to adequately address and document Student's progress on her annual goals in the 2004-2005 and 2005-2006 school years.
3. The District did not deny FAPE by failing to provide Student with an appropriate transition plan in the 2003-2004 school year.
4. The District did not fail to provide services and goals for Student in the 2002-2003, 2003-2004, 2004-2005 and 2005-2006 school years.
5. The District did not deny Student a FAPE by:
 - a. Failing to ensure that teachers and service providers were knowledgeable about Student's September 2002 IEP;
 - b. Failing to implement accommodations contained in Student's September 2002 IEP; and
 - c. Failing to implement the Alpha Smart accommodation contained in Student's October 2004 IEP.

6. The District did not fail to provide Student with placement in the LRE in the 2005-2006 school year.
7. Student is not entitled to Lindamood-Bell compensatory services.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

DATED: October 17, 2007



JUDITH L. PASEWARK

Administrative Law Judge

Office of Administrative Hearings

Special Education Division