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

In the consolidated matter of: STUDENT, Petitioner/Cross Respondent, vs. COMPTON UNIFIED SCHOOL DISTRICT, Respondent/Cross Petitioner.	Case Nos. N2005070151 N2005070129[1]

DECISION

This matter was heard before Marilyn A. Woollard, Administrative Law Judge (ALJ) for the Office of Administrative Hearings (OAH), Special Education Division, State of California, on August 29, 30, and 31, 2005, in Compton, California.

Petitioner and Cross Respondent Student (Student or Student) was represented at the hearing by his attorney, Lillian Meredith. Student's father, Father, and his mother, Mother, were also present at different times during the hearing. Respondent Compton Unified School District (District) was represented at the hearing by its attorney, Daniel Gonzalez. Also present at the beginning of the hearing was the District's interim director of special education, Joseph Mahabir.

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[1] These cases were originally filed with the California Special Education Hearing Office and were designated case numbers SN04-01646 and SN05-01671, respectively. They were transferred to OAH effective July 1, 2005.

Petitioner called the following witnesses: his father Father, Black Community Education Task Force ombudsman Dr. Ernie Smith, and Los Angeles Unified School District school psychologist Robert L. Jones. The District called its former program coordinator for special education Mr. Umar Baba as a witness.

Oral and documentary evidence was received. The parties agreed that the record would remain open pending receipt of their written closing arguments. On September 14, 2005, the ALJ received these arguments, which were made part of the record as Petitioner's exhibit 14 and Respondent's exhibit 18. The record was then closed and the matter was submitted for decision.

ISSUES[2]

I. Did the District deny Student a FAPE beginning June 25, 2001 for the 2000-2001, 2001- 2002, 2002-2003, 2003-2004, and 2004-2005 school years, by:

a. failing to hold annual individualized education program (IEP) team meetings,

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[2] On the second day of the hearing, the parties advised the ALJ that they had settled the District's case, No. N2005070192, which involved its right to assess Student pursuant to its December 3, 2004 assessment plan. The parent signed the assessment plan after adding language to ensure that Student's cultural and racial identity would be considered in conducting the assessment and that the assessor would be qualified to assess these factors. As a consequence, the District withdrew its case.

Student's issues for hearing have been reorganized for clarity of analysis. In his closing brief, Student attempted to expand his Issue I from the time periods identified in his issue statement, affirmed on the first day of the hearing, and as outlined above, to whether the District "denied him a FAPE for the past 8 years and continuing to the present day." This expanded issue is not addressed in this Decision.

b. failing to pursue due process to override parent's lack of consent to its February 28, 1997 IEP?

c. failing to provide his parents with copy of their rights, and/or,

d. failing to identify him as a student with a disability pursuant to its child find duty?

II. Did the District, upon referral by Student's parents, fail to assess him in all areas of suspected disability, including educational, social-emotional and psychological, from June 25, 2001 through the 2004-2005 school year?

III. Are Student's parents entitled to reimbursement for the psycho-educational assessment conducted by Billie Thomas in October and November 2004?

IV. If the District has denied Student a FAPE, is he entitled to reimbursement for educational expenses his parents incurred during the 2004-2005 school year to send him to Verbum Dei, a private high school, and/or to compensatory education?

CONTENTIONS OF THE PARTIES

Student asserts that the District has denied him a free appropriate public education (FAPE) for the 2000-2001 through 2004-2005 school years beginning on June 25, 2001. Specifically, Student contends that his only IEP, which is dated February 28, 1997, is still in effect and imposed a continuing duty on the District to convene annual IEP team meetings, including individualized transition plan (ITP) meetings, for him each year within the three- year statutory limitations of claims period which began on June 25, 2001. In the alternative, Student contends that the District had an obligation to file a request for due process hearing to override his parents' lack of consent to the February 28, 1997 IEP. Student further asserts that the District failed to provide his parents with a copy of their rights, failed to identify him as a student with a disability pursuant to its "child find" duty, and failed to assess him in all areas of suspected disability after his

parents referred him for a special education assessment. As a consequence of these violations, Student asserts that he is entitled to compensatory education services and that his parents are entitled to reimbursement for the private educational, assessment, and related services they expended to obtain an appropriate education for him during the 2004-2005 school year.

The District asserts that Student's father revoked his consent to the 1997 IEP, that it had no continuing duty arising out of the 1997 IEP to convene annual IEP/ITP meetings or to pursue due process, and that any claims arising out of the 1997 IEP are barred by the three- year statute of limitations pertaining to special education due process hearings. The District further asserts that, since June 2001, Student's parents have never requested special education assessment or services. Rather, the District contends that Student's father advised its staff that he was not interested in special education assessment or services for his son, and that the only services he sought for Student were bilingual education services in the form of an assessment and instructional services in Ebonics.[3] The District contends that there is no basis for Student's child find claim, and that compensatory education and reimbursement are not warranted.

FACTUAL FINDINGS

PROCEDURAL BACKGROUND

1. On June 25, 2004, Father filed a request for a due process hearing on Student's behalf against the District. Father asserted that Student's primary language was an African language system known as Ebonics that was derived from his Nigritian or

[3] Ebonics is defined as "a nonstandard variety of English spoken by some American blacks -- called also *Black English vernacular" (Merriam Webster Dictionary)',* however, Student contends it is a separate language not derived from English.

Niger-Congo heritage, and that this was a non-English language. As a proposed resolution to this problem, Father requested that Student be assessed in Ebonics, and that the District create an Ebonics assessment tool if one did not exist. In addition, Father requested that all of Student's grades which allegedly had been given "based on inappropriate placements," be expunged from his records. In support of the request for a due process hearing, Father incorporated a twenty- five page declaration from himself and a declaration from Student's mother, each of which was written in fluent English.

2. Student's case was originally set for hearing on July 20, 2004. On July 15, 2004, it was continued at Student's request and the parties then took the matter off-calendar to pursue mediation. On April 25, 2005, the Special Education Hearing Office (SEHO) dismissed the case for lack of activity. On May 19, 2005, SEHO denied Student's motion to reopen his case. On June 14, 2005, SEHO granted Student's motion to reconsider the order denying his motion to reopen. Student's case was reopened, and the due process hearing was set for July 14, 2005.

On June 22, 2005, the District filed its request for a due process hearing. This matter was set for hearing on July 12, 2005. On July 6 and 11, 2005, the parties filed written requests to continue both hearings.

On July 14, 2005, a telephonic status conference was convened by OAH. The parties' request to continue the hearings and to consolidate the two cases was granted and a pretrial/settlement conference date was calendared. The consolidated hearing was set for August 29 through September 2, 2005.

A. Relevance of Testimony Regarding Ebonics

3. On August 10, 2005, the undersigned ALJ issued an order requiring the parties to exchange issue statements prior to the settlement conference. This order also addressed the relevance of evidence about Ebonics in the special education due process hearing. Specifically, the order determined that expert testimony on whether Ebonics is

a non-English "native language" was not relevant to the special education issues to be addressed at the due process hearing. (August 10, 2005, Order Regarding Issue Statements.)

On August 29, 2005, the due process hearing commenced. The ALJ clarified that written and oral evidence of meetings and communications between the parent and the District regarding Ebonics may be relevant to the .limited extent that these meetings and communications may also have involved a request for special education assessment and services. The ALJ noted that a central dispute between the parties was whether, as the District asserted, the parent only sought bilingual education assessment and services for Student or whether, as the Student asserted, his parent sought special education services in addition to assessment and instruction in Ebonics.

B. Parental Request for Interpreter in Nigritian Ebonics

4. In the afternoon on August 29, 2005, Student's attorney Ms. Meredith requested that an interpreter fluent in Nigritian Ebonics be provided to Father Student noted that a request for an interpreter had been made when the parent filed his request for due process hearing.

The ALJ noted that she had participated in two previous due process hearings with Father regarding his son J. and that there had been no request for an interpreter or any indication that the parent was unable to understand or to participate in these proceedings. In addition, Father personally wrote several complex documents in the English language, including his request for due process hearing and his extensive declaration. The ALJ denied the request for an interpreter. Student's attorney indicated that Father had expressed to her his inability to understand and his concern at not

wanting to appear 'dumb.' The ALJ told Father to indicate if he had difficulty understanding.[4]

C. Parent's Request for Telephone Testimony of Unavailable Witness

5. On August 29, 2005, Ms. Meredith advised the ALJ and the District that school psychologist Billie Thomas was unavailable to testify at the hearing because she was on vacation. Ms. Meredith then requested that Ms. Thomas be allowed to testify by telephone. The District objected to telephone testimony. The ALJ denied the request for telephone testimony.

The July 14, 2005 status conference order specifically ordered the parties to ensure the attendance of their witnesses for the hearing dates which were firmly set for August 29 through September 2, 2005. The parties were further advised that witness unavailability would not be considered good cause for a continuance of the hearing dates. Student thus had approximately six weeks after the status conference to arrange for witness testimony in support of his case which has been pending since June 25, 2004. Student failed to file a motion prior to hearing for an order authorizing telephone testimony or to notify and obtain consent of opposing counsel for such testimony. Student offered no evidence that he had subpoenaed Ms. Thomas to testify at the hearing or that she would be available on any other dates.

[4] Father later expressed his difficulty in understanding the testimony of District witness Umar Baba on several occasions, stating that Mr. Baba did not speak good English. The ALJ notes that Mr. Baba has a strong accent which necessitated careful listening by all hearing participants.

FACTUAL BACKGROUND

6. Student is a seventeen- or eighteen-year-old African-American student who lives within the jurisdictional boundaries of the Compton Unified High School District.[5] Until September 2004, Student received all of his education while attending public schools within the District. In June 2004, Student attended an initiation summer session at Verbum Dei, a private all-male Catholic high school. In September 2004, Student was placed by his parents at Verbum Dei for the 2004-2005 school year. Student is not currently eligible for special education and related services.

1997 ASSESSMENT AND INITIAL INDIVIDUALIZED EDUCATION PROGRAM (IEP)

7. At the beginning of the 1996-1997 school year, Father requested that the District conduct a special education assessment of Student, who had just entered the fourth grade at its McNair Elementary School.

8. On January 16, 1997, Student was assessed by District school psychologist Janice Abner due to concerns over his "significantly below grade level" achievement in language arts and mathematics. Ms. Abner's assessment is the only assessment conducted by the District to the present date to determine Student's eligibility for special education and related services.

From her assessment, Ms. Abner determined that Student's cognitive functioning was in the average to below-average range, and that he was severely lacking in the acquisition of basic academic skills. For example, on the Wide Range Achievement Test

[5] Although Father testified that Student's birthdate was July 22, 1988, all District documents in evidence, as well as his father's 2004 request for a due process hearing, indicate he was born in 1987 and was thus eighteen years old at the time of the due process hearing.

(WRAT-R3), Student's reading decoding, spelling, and arithmetic (calculation) skills scored at or below the first grade equivalent. Ms. Abner determined that Student had a significant deficit in both auditory sequencing (executing two-step directions) and auditory attention; a deficit in general auditory memory; strength in visual memorization; and lags in general social- emotional maturation. Ms. Abner concluded that Student had a learning disability.

9. On February 28, 1997, the District convened an IEP team meeting. The IEP team reviewed the assessment and determined that Student was eligible for special education based upon a specific learning disability (SLD) in reading and in arithmetic. The team determined that Student's "cognitive ability [was] within the average range with non verbal functioning significantly higher in comparison to measured verbal ability;" and that his SLD was due to a processing disorder characterized by a deficit in sequential memory and auditory attention along with auditory-visual integration. The IEP team determined that there was a significant discrepancy between Student's visual and auditory cognitive abilities, and between his visual cognition and his academic achievement.

The IEP team offered Student placement in a special day class (SDC), speech and language services twice weekly, and counseling "at whatever time it becomes necessary."

10. Father signed the IEP next to the statement "I have read and understand my rights as explained to me by the district representative." Father also signed each of the annual goal pages, next to a printed statement that "I understand and agree with the emphasis on the goals and objectives stated in this plan. 11 understand that this program is reviewed annually, and that I may request at any time a re-evaluation or change of educational program for my child. I give my consent to the on-going assessment which is an aspect of this program." Although Father signed and dated the

IEP document, he did not consent to the recommended educational program and placement outlined for Student in the IEP. Instead, Father advised the IEP team that he wanted to visit the SDC classroom at which the District offered to place Student.

11. During his visits to several proposed SDC classrooms, Father observed students who he believed demonstrated severe mental problems and appeared to be on psychotropic medication. Father concluded that the SDC classroom was not appropriate for Student, and so advised the District. He received no response from District staff regarding his decision.

12. On October 20, 1997, Father and Dr. Ernie Smith, an ombudsman and advocate from the Black Community Education Task Force, met with District's assistant superintendent, Dr. Lilly Nelson, about Student's education. Dr. Smith is a professor of linguistics who has a specific emphasis in African heritage and an expertise in the evolution of African language systems.[6] Dr. Smith's testimony at the hearing was limited to his role as an advocate for Father in his interactions with District personnel regarding Student's education.

At this meeting, Father advised Dr. Nelson:

- that he opposed placing Student in any of the special day classes he had visited. Father also told Dr. Nelson that "he and his wife did not want their son

[6] Dr. Smith has doctoral decree in comparative culture with a specialty in comparative linguistics. He has lectured and written extensively on topics relating to the language of African Americans, Ebonics, bilingualism, and teaching English to African-Americans as a second language. Dr. Smith has no formal training in special education, or in the laws or regulations pertaining to special education. Dr. Smith has not assessed Student, or observed him in a district classroom or at Verbum Dei.

in special education," and he withdrew his consent to the February 28, 1997 IEP. (Student's exhibit 4, pp. 2 and 5; testimony of Father and Dr. Smith).

- that Student's primary language was Ebonics not English and that he was a student of limited English proficiency (LEP). This point was further advocated by Dr. Smith.
- That he was concerned about whether the tests used to assess Student were valid. Both Father and Dr. Smith advised Dr. Nelson that Student's LEP impeded his participation in the District's instructional programs, and that he was being discriminated against based upon his race and color, and denied the same educational opportunities that Spanish-speaking LEP students are afforded through bilingual education and ESL programs.[7]

In response, Dr. Nelson advised Father and Dr. Smith that Student's primary language was English because both he and Father spoke English. Father requested that

[7] In his written summary of this meeting, Dr. Smith recommended that Father take further action by meeting with other District superintendents or state administrators, that he file a complaint with the United States Office of Civil Rights, with the California Department of Education, and that he seek the assistance of an attorney to commence legal proceedings against the District. Dr. Smith testified that at the time of this meeting, other lawsuits had been filed challenging racial discrimination against African-American students that resulted in their educational misclassification. For example, a permanent injunction was issued that prohibited the use of certain intelligence tests that had the effect of disproportionately identifying African-American students as mentally retarded. See: *Larry P. vs. Riles* (N.D. Cal. 1979) 495 F. Supp. 926, *affd in part, revd. in part* (9th Cir. 1986) 793 F. 2d 969.

Student be reassessed in his primary language and that a linguistically appropriate instructional program be provided.

12. The uncontradicted evidence establishes that Father advised the District on several occasions in 1997 that he would not consent to the implementation of Student's February 28, 1997 IEP. Father directly testified that he did not agree to place Student in any of the educational placements offered to him by the District following the February 28, 1997 IEP team meeting. Father expressly revoked his consent to the IEP at the October 1997 meeting with Dr. Nelson. Father testified that Dr. Smith's written summary of this meeting, including that portion that described his withdrawal of his consent to the IEP, was accurate. In addition, Father's declaration indicates that he revoked his consent to Student being identified as a special education student. (Resp. Exh. 5 R0025 at Par. 32). Father testified that this statement in his declaration was accurate and that, after he observed the offered SDC placements, it was clear to him that Student "was not going" to be placed in these settings.

13. Student continued to attend District schools after his IEP, but was not in special education. He continued to struggle academically and he repeated the sixth grade.

14. In the 2000-2001 school year, Student attended seventh grade at the District's Willowbrook Junior High School. Father spoke to Student's teachers, to his counselor and to the principal many times regarding academics and behavior, and he asked the school several times for Student to "get as much help as he could."

No evidence of Student's grades at the conclusion of the seventh grade was provided. On May 1, 2001, near the end of seventh grade, Student took the SAT-9 test to determine his proficiency in reading, writing, and mathematics. Student's grade equivalent scores on the SAT-9 were three to five years below that of his peers.

15. In the 2001-2002 school year, Student attended eighth grade at Willowbrook. Father again discussed Student's grades with his eighth grade teachers. To Father's knowledge, none of Student's teachers had ever reviewed his 1997 IEP.

No evidence of Student's grades at the end of the eighth grade was provided. However, on May 1, 2002, near the end of the eighth grade, Student took the SAT-9. Once again, Student's grade equivalent scores on the SAT-9 were three to five years below that of his peers.

16. Student's SAT-9 grade equivalent scores for May 2001 and May 2002, as compared to his actual grade level (GL), included the following:

SAT-9 Test Description	*5-2001 (7.8 GL) Grade Equivalent*	*5-2002 (8.8 GL) Grade Equivalent*
Total Reading	3.3	4.0
Reading Vocabulary	2.4	5.2
Reading Comprehension	3.9	3.4
Total Mathematics	4.5	5.4
Language Mechanics	2.8	3.1
Language Expression	4.5	3.9
3 R's Total	3.8	5.2

17. In the 2002-2003 school year, Student attended ninth grade at Compton High School and was assigned to a regular education class known as the A & T class. None of the witnesses at the hearing were able to clearly describe what the A&T class was; however, Father believed the A&T class was for students who had behavior and learning problems. Father asked for a different class placement for Student and spoke with all of his teachers as well as his counselor in an effort to do so. This was not successful.

For the first semester of the ninth grade, Student received four "F" grades (English, algebra, art history, and beginning band), a "D" (health education), and an "A" (physical education/PE). In the second semester of the ninth grade, Student received five "F" grades (English, algebra, art history, beginning band, and computer literacy), and a B (PE). At the end of ninth grade, Student was promoted even though he had predominately failing grades. Father testified that he was "dumbfounded" by Student's failing grades and "wrote letters to everyone." Copies of these letters were not included in the exhibits.

18. Student attended summer school for the 2002-2003 school year and received "C" grades in two English classes, for which he earned ten credits. He was promoted to the tenth grade. SAT-9 scores for this year were not included in the exhibits.

19. In the 2003-2004 school year, Student attended tenth grade at Compton High School. In the first semester of tenth grade, Student received three "F" grades (English II, geometry, and world civilization), a "D" (choir), a "C" (general biology), and an "A" (PE). For the second semester of tenth grade, Student received five "F" grades (home room, geometry, choir, general biology and word civilization), and two "Cs," (English II and PE). SAT-9 scores for this year were not included in the exhibits. During this school year, Father talked to Student's tenth grade teacher Mr. Mathesen, to the vice principal Ms. Lee, as well as to his high school counselor Ms. League.

During his tenth grade year, as indicated in the District's discipline records, Student engaged in some disruptive and defiant behaviors in class, had a one-day suspension, a history of being disruptive in class, and excessive tardiness to some classes. Student had ten full-day unexcused absences and numerous "tardies" or unexcused absences from individual classes. For example, he had a total of thirty-seven unexcused absences, with nineteen additional "tardies," from his third period class.

Father testified that some of the tardies were the result of administrative errors by the District, because his coach had changed one of Student's periods but the schedule was not changed, with the result that Student would be registered as tardy.

20. Student's September 10, 2004, transcript from Compton High School reports that his total grade point average was 0.8779. Student had attempted 133.50 credits and completed 52.50 credits. He ranked 597th in a class of 673. He had not passed any portions of the high school competency examination.

Evidence of Verbal or Written Requests for Assessment after June 2001

21. Student submitted no documentary evidence to indicate that there was any written communication between his parents and the District about his education from the spring of 1998 through May 2004. On the first day of hearing, Student's counsel confirmed that the parents had not made any written request for an assessment of Student after the February 1997 IEP because the parent had assumed that IEP remained in effect. Although Father testified that he "wrote letters to everyone" about Student's grades, copies of these letters and/or emails were not offered into evidence at the hearing.

22. On April 7, 2004, Father had a conference with Student's high school counselor Ms. League to request that Student be taken out of the A&T class. According to the District's Student Conference Record, Father advised Ms. League that he had talked with all of Student's teachers, did not understand why they gave him "F" grades and "requested SST" [Student Study Team]. Father had no recollection of requesting an SST.

23. On or about May 19, 2004, Ms. League and Father had another conference about Student's poor grades in the A&T class. This was apparently the first direct communication between the parties regarding the existence of Student's 1997 IEP. Father testified that he mentioned Student's 1997 IEP, but that Ms. League could not

find it in Student's cumulative (cum) files. This was the first time Father learned that the District did not have Student's IEP. He was distraught because of Student's failing grades. Father wrote a letter to Ms. League about this; however, the letter was not offered into evidence at the hearing.[8]

24. On May 28, 2004, Compton High School's vice principal, Dr. Willard Williams met with Father, Dr. Smith, and District's program director for special education, Umar Baba. Father testified that he showed Student's IEP to Dr. Williams and Mr. Baba and was told that the District did not have it. Mr. Baba then told Father he needed to speak to special education director Dr. Rita Diggs.

25. Father testified that he believed that Student's 1997 IEP was still in effect until May 2004 when he learned for the first time that the District did not have any record of this IEP. This belief is not objectively reasonable in light of the parent's unequivocal rejection of the IEP in 1997. Father also testified that, to his knowledge, none of the teachers with whom he spoke about Student's grades had ever reviewed the prior IEP. It is not objectively reasonable to believe that the parent would not question Student's teachers regarding the existence of the IEP, particular in light of Father's testimony that five of his ten children have received special education services.

[8] Father's testimony was uncontradicted on this point; however, the District's student conference record (SCR) penned by Ms. League suggested that the parent had denied that Student had previously been in special education and told her that Student had a language barrier, not a learning problem. Ms. League did not testify at the hearing. Father testified he never denied Student had been in special education.

TESTIMONY OF UMAR BABA[9]

26. Mr. Baba is currently the principal of the District's Rosencrantz Elementary School and previously worked for the District as a teacher, a curriculum specialist, and as an assistant principal. In addition, during the 2003-2004 school year, he was employed by the District as the program coordinator for special education with responsibility for monitoring the timely implementation of psychological evaluations, IEP meetings, and special education programs, and for ensuring compliance with special education guidelines and procedures. Mr. Baba has a master's degree in educational administration, an administrative credential, and a multiple subject professional clear teaching credential.

27. Mr. Baba first became familiar with Student and his father at the end of the 2003- 2004 school year, when he attended a meeting with Dr. Williams, Father, and a person he described as Father's representative (Dr. Smith). At this meeting, Mr. Baba learned that Father wanted Student to be assessed in Ebonics and reported that Student was incorrectly placed due to his assessment in English. Mr. Baba was given a thick declaration from the parent and advocate explaining this request. When Mr. Baba heard that Student was failing and in the wrong placement due to an alleged misdiagnosis, he asked Father whether the District could do a special education psychological assessment. This was the first mention of special education during the discussion. Father told Mr. Baba that Student was already assessed by special education and that an IEP had been done. Father also told Mr. Baba that he had rejected the IEP because the placement was "with gangs." Father provided Mr. Baba with copies of Student's IEP and other documents. When Mr. Baba again suggested that Student be reassessed for

[9] Mr. Baba's resume, which the parties agreed could be sent to the ALJ, was admitted as Resp. Exh. 17.

special education, Father "categorically" told Mr. Baba that he wanted an Ebonics assessment only.

28. Because Mr. Baba had never heard of an Ebonics assessment, he asked Father and his advocate to accompany him to the office of the director of special education, Dr. Rita Diggs. When they arrived at her office, Dr. Diggs was not available. As a consequence, Mr. Baba left a message with the director requesting the Ebonics assessment.

Mr. Baba then suggested to Father that the District's director of child welfare and attendance, Dr. Buenavista, who was also in charge of new student orientation and assessment, might be of assistance. Mr. Baba left a note for Dr. Buenavista requesting that he set up a meeting with Father Because Mr. Baba was clearly told that Father was not seeking an assessment for special education, he did not have any further contact with the parents.

29. Father never received any responses to the messages left for Dr. Diggs or Dr. Buenavista.

30. On June 14, 2004, Father wrote a letter to Dr. Buenavista to request that Student be assessed in Ebonics, and that his failing grades be expunged and replaced with "passing grades because of [his] attendance, and inappropriate assessments lead to inappropriate placement that lead to inappropriate grades."

31. On June 18, 2004, Father wrote a letter to Compton High School's principal Dr. Asfaw, in which he indicated that his sons have "been denied and discriminated against because they speak a language other than English; from getting from the Compton USD a free appropriate public education." Father made a similar request to expunge Student's grades and to replace them with passing grades.

32. On June 25, 2004, Father filed his request for a special education due process hearing. Dr. Smith testified that one of the purposes of this request was to have the District develop an assessment instrument in Ebonics.

33. The parent did not make a verbal request for a special education assessment at the May 28, 2004, meeting with Dr. Williams and Mr. Baba. Mr. Baba's testimony regarding the parent's categorical rejection of any assessment for special education is persuasive on this point and is consistent with the parent's past actions and requests for an assessment only in Ebonics.

34. The parent's letters of June 14, and June 18, 2004, did not constitute written requests for a special education assessment sufficient to trigger the assessment process. These letters reiterate the parent's ongoing concern regarding Student's asserted bilingual-Ebonics education·needs and challenge to his assessments in English rather than in Ebonics. In addition, the only action requested is the removal of failing grades from his educational records.

EVIDENCE REGARDING CHILD FIND OBLIGATION

TESTIMONY OF MR. BABA

35. Mr. Baba described the Student Study Team or SST process as a general education program or mechanism within the District that may result in referrals of general education students to special education for assessment. In addition, referrals for a special education assessment can be directly requested by a teacher or anyone concerned. Mr. Baba's testimony was based upon his knowledge and experience as an SST chairperson at a District elementary school, whose duties included training teachers to refer "at risk" students to the SST for necessary interventions.

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In Mr. Baba's opinion, it was the responsibility of the teachers to make referrals to the SST, which would meet only after receiving such referrals. Typical issues justifying an

SST referral were negative behaviors and poor academics. A referral to the SST did not mean that the student would be referred to special education for assessment. Rather, the SST team generally would first make recommendations to teachers to try various strategies to meet the needs of the student.

To explain the SST process, Mr. Baba reviewed the District's SST procedures chart that was to be followed when a student had difficulties at school, including in attendance, behavior and learning. A referral to the SST would occur when informal modifications had been unsuccessful. If accommodations or modifications recommended by the SST were not successful, the SST would refer the student to special education for assessment. If the student qualified for special education, an IEP would be developed. Mr. Baba testified that the flowchart might not be consistently followed and that its applicability would depend upon the situation. For example, if a student was chronically absent, the SST may not refer him/her to special education even if teacher accommodations were not successful because the failure to attend class affects learning. If there is an attendance issue, Mr. Baba indicated that rather than an SST, the school might convene a parent conference.

In reviewing Student's failing grades in the ninth grade, Mr. Baba indicated that they were a serious concern. However, whether this should have resulted in a referral for special education would depend on other factors; for example, if he was attending school regularly. Mr. Baba also noted that, if Student was in special education at the time, these grades would have precipitated an IEP meeting. Because he was in general education, however, a referral would have to be initiated by the general education teacher. Mr. Baba also noted that in high school, general education students are assigned to different teachers who may not be aware of the grades that the student has received in other classes. Mr. Baba also indicated that Student's absences from school or from selected periods, as indicated in his tenth grade attendance record for the

2003-2004 school year, could have affected his grades. Mr. Baba had no knowledge of Student's attendance in the 2001-2002 or 2002-2003 school years.

In Mr. Baba's opinion, Student's five "F" grades during the first semester of tenth grade would raise concern regarding the need for an SST. Mr. Baba would address this seriously if the student was in special education but was not sure how it would be addressed for a student in general education. Mr. Baba testified that there was no district procedure to review individual SAT-9 scores to determine whether a student was at risk.

TESTIMONY OF ROBERT JONES

36. Robert Jones has been a school psychologist with the Los Angeles Unified School District since 1999. As part of his education and experience, he has conducted assessments for special education eligibility and provided DIS counseling for social emotional problems. He has experience in the social and cultural implications of assessments with an emphasis on working with African-American, Spanish- speaking, Native American, and Philipino- American populations. Mr. Jones also has a master's degree in educational administration as well as an administrative credential. He is enrolled currently in a doctoral program in education with an emphasis on becoming a superintendent.

In the fall of 2004, independent school psychologist Billie Thomas conducted a psycho-educational assessment of Student at the parents' request. Ms. Thomas asked Mr. Jones to work with Student in the "mediated learning" format (also known as "dynamic assessment)," in which he is experienced. Mediated learning is a form of tutoring which emphasizes the development of a relationship and rapport with the student. This process recognizes that it is necessary to break down barriers and to develop trust between teacher and student before assessment and learning can effectively take place. Mr. Jones found this to be an effective learning strategy for

Student, because he has a history of academic failure, and because he is quiet and does not volunteer when he does not understand or when he needs help.

From October through December 2004, Mr. Jones provided one-to-one "mediated learning" sessions to Student for two to three hours a week. In addition, he called Student approximately twice a week and talked with him for fifteen to twenty minutes to ensure he was following through on his work. From January through June 2005, Mr. Jones' work with Student was "spotty." In total, during the 2004-2005 school year, Mr. Jones spent approximately sixty hours (60) working with Student.

In addition to his direct work with Student, Mr. Jones administered the Wide Range Achievement Test (WRAT) to Student on several occasions, using different versions of the test, in accordance with the manufacturer's instructions. His test results were not provided. Mr. Jones testified that his October 2004 WRAT results were consistent with those found by Ms. Thomas; i.e., Student received standard scores in the "significantly below average" range (60s) in math, reading, and spelling. In a December 2004 retest in math, Student received a standard score in the average level (90s), at age and grade level equivalency. In June 2005, Mr. Jones reassessed Student in reading only and found his reading to be above average at a standard score of over 100. Mr. Jones observed an improvement in both phonemic awareness and in self-esteem.

Mr. Jones testified that Student's intelligence is in the average range, that he is a visual learner who has weakness in auditory processing and who needs to see and manipulate things to learn. Student has low self-esteem arising from his academic failures. Mr. Jones testified that despite Student's improvements in math and reading, he requires continued coaching and using of these skills to ensure that they remains in his long-term memory. To Mr. Jones, Student's improvement demonstrated that he had the ability to learn when focused, with the use of coaching and motivational strategies. In

his opinion, Student's needs could best be met by mediated learning sessions and by regular counseling services at school.

37. Mr. Jones reviewed school psychologist Billie Thomas's November 2004, psycho- educational assessment of Student. In his opinion, Ms. Thomas's findings regarding Student's average cognitive ability and his "significantly below average" academic achievement, with standard scores in the 60s, were consistent with his observations and assessment of Student. He agreed with her findings and recommendations for Student.

Mr. Jones reviewed the District's 1997 IEP that indicated Student exhibited a specific learning disability in reading and math due to a processing disorder. In his opinion, a specific learning disability is still an issue for Student.

38. Mr. Jones also reviewed Student's May 2001 SAT-9 scores. In his opinion, these SAT-9 scores may have indicated a need for a special education assessment plan. Mr. Jones opined that a "red flag" would be raised for school administrators if a student who was not currently eligible for special education received these low SAT-9 scores in conjunction with current failing grades. Mr. Jones believed that a Student Study Team (SST) that would include the parents should have been convened in light of these low scores. It would be important to review these scores in light of how the student performed in the classroom. The SST team would discuss all pertinent information about the student and recommend what action should be taken, including a referral for special education assessment if appropriate. If a student had previously had to repeat a grade, in his opinion, there would be a more urgent need to review the student's situation, but the SST process should be followed prior to a special education referral. In addition, if the student had IEP in the past, as a school psychologist, he would review the original pre-IEP assessment scores.

The testimony of Mr. Jones is persuasive and entitled to great weight, in light of his professional background, training, and experience, as well as the extensive time he spent working with, observing, and assessing Student during the 2004-2005 school year.

39. None of Student's teachers from Compton High School were called as witnesses in this matter.

40. The evidence presented indicates that Student was not a student with significant behavior or attendance problems. While some defiance and a pattern of tardiness was documented in the tenth grade, no other evidence was presented to support a finding that Student's behaviors at school during any of the years in question were of a nature or type in themselves to justify a referral to the SST or for a special education assessment.

41. Student's low seventh grade SAT-9 scores in May 2001 do not in themselves support a finding that the District should have made a referral to the SST or for a special education assessment by or after June 25, 2001.

42. Student's low eighth grade SAT-9 scores in May 2002, alone or in conjunction with his previous SAT-9 scores, do not support a finding that the District should have made a referral to the SST or for a special education assessment by the end of the 2001-2002 school year. In addition, as indicated in Finding 16, a comparison of these scores from the seventh to the eighth grade demonstrates that Student made academic grade level progress in the core areas of reading, writing, and mathematics.

43. As indicated in the testimony of both Mr. Baba and Mr. Jones, Student's academic performance in the ninth grade during the 2002-2003 school year was clearly a cause for alarm. As confirmed by Mr. Baba's testimony, Student's transition from Willowbrook Middle School to Compton High School for ninth grade involved a change to a "block schedule" in which students rotated into the classes of individual teachers for specific subjects. As a result, individual teachers had no information regarding his

performance in other classes. Thus, that Student had failed a total of four classes at the end of the first semester, including the core subjects of English and algebra, would not have been known to his teachers.

The evidence supports a finding that by the end of the second semester of ninth grade, in June of 2003, the District should have been aware of Student's need for intervention, including a need for assessment for special education. Student received five "F" grades in English, algebra, art history, beginning band, and computer literacy in his second semester. This fact, coupled with his first semester failing grades, his previous low SAT-9 scores, and his previous identification as a student with a specific learning disability, was sufficient to objectively indicate to the District that Student was potentially a student with a disability who was in need of special education assessment services.

The District lacked any coordinated mechanism for finding and referring students who may have a disability for an assessment, with or without the intermediate step of an SST. This fact was starkly apparent when Student was promoted to the tenth grade despite failing five courses at the end of ninth grade, and despite his prior history of low scores and of a specific learning disability.

44. Thus, by the end of Student's ninth grade school year (2002-2003), pursuant to its child find obligation, the District had sufficient notice to trigger its duty to refer him for a special education assessment.

As a consequence of this finding, the District was obliged to prepare and to provide Student's parents with an assessment plan and with notice of their rights within fifteen calendar days. (Cal. Ed. Code section 56043.) Because this obligation arose at the end of the school year, however, the District was required to develop the assessment plan "within 10 days after the commencement of the subsequent regular school year...." (Cal. Ed. Code section 56321, subdiv. (a).) The parents then had fifteen calendar days to

review and decide whether to consent to the assessment plan. (Cal. Ed. Code section 56321, subdiv. (b).)

Once the District received the parents' written consent to the assessment plan, an individualized education program as a result of the assessment must have been developed within fifty calendar days, unless the parents consented to an extension. (Cal. Ed. Code section 56321, subdiv. (d).)

45. Within seventy-five days following the beginning of the 2003-2004 school year, the District was required to have completed it assessment of Student and to have convened an IEP team meeting to review its results, determine his eligibility, and develop an appropriate plan.

Neither party submitted copies of the District's official school calendar. However, from the above, the assessment and the IEP should have been completed by approximately the middle of November 2003.

46. The ALJ finds persuasive Mr. Jones's opinion testimony that Student appears to be a student with a specific learning disability based upon his direct experience working with him, as well as his review of Ms. Thomas's 2004 assessment and the District's 1997 IEP, each of which concluded that Student has a specific learning disability. Mr. Jones is an experienced school psychologist who has assessed many students for special education eligibility, including those with specific learning disabilities. Furthermore, Mr. Jones worked directly with Student during the 2004-2005 school year for sixty hours. His testimony establishes that Student was a student with a specific learning disability within the time frame outlined in Finding 45.

Therefore, because Student was a student with a disability, the District denied him a FAPE by failing to timely find and assess him and develop an IEP to address his unique educational needs from mid-November 2003 through the conclusion of the 2004-2005 school year.

District's Requests for Consent to Assess Student for Special Education

47. The District first sent Student's parents an assessment plan on October 11, 2004 by certified mail. While Father testified that he never received it, it was mailed to the same address he provided on his due process hearing request form.

On December 3, 2004, the District prepared a second assessment plan for Student. Father testified that he did receive the December 3, 2004 assessment plan.

On February 22, 2005, the District's attorney Daniel Gonzalez sent a letter to Ms. Meredith reiterating the District's desire to assess Student and to receive parental consent to the assessment plan. On June 13, 2005, Mr. Gonzalez advised Ms. Meredith that the District would request a due process hearing to obtain an order authorizing it to assess Student. On June 22, 2005, because the parents had not signed the assessment plan, the District requested its due process hearing on this issue.

48. On August 30, 2005, approximately nine months after they acknowledged receipt of the December 3, 2004 assessment plan, Student's parents provided written consent authorizing the District to assess him to determine his eligibility for special education and related services. The language added to the assessment plan that led to the parent's consent to assessment was essentially a reiteration of the District's existing statutory obligation to conduct assessments using testing and assessment materials and procedures that are selected and administered so as not be racially or culturally discriminatory. (Cal. Educ. Code section 56320, subdiv. (a).)

Student's placement at Verbum Dei High School

49. In early June 2004, Student's parents began the application process for his admission to Verbum Dei High School, a private Catholic boys' school. On June 28, 2004, Student began attending a six-week initiation summer program at Verbum Dei.

50. On August 4, 2004, Father wrote a letter to Mr. Gonzalez "to formalize [his] disagreement with the Compton Unified School District's (district's) offer of free and

appropriate education (FAPE) for the past three years, for my son Student....” Father specifically indicated that the District “has failed to appropriately address [a different son’s] [sic] speech and language disabilities and needs related to his diagnosis of a specific learning disability.” Father advised Mr. Gonzales that, due to this failure, he would begin to provide private educational services to Student and that he would seek reimbursement from the District. Father testified that the offer of FAPE to which he referred in this letter was that made in the 1997 IEP.

51. Student enrolled full time at Verbum Dei for the 2004-2005 school year, for the eleventh grade.

52. The tuition for the 2004-2005 school year at Verbum Dei was $4,000.00. As part of Verbum Dei’s educational program, its students were required to participate in a work-study program that defrayed fifty percent of their total tuition. If the student chose not to participate, the parents would be charged the full tuition. Student participated in work-study at the Watts homeless shelter program. Accordingly, Father paid $2,000.00 for Student’s tuition for the 2004-2005 school year.

53. In addition to tuition, Student incurred an additional $540.00 in educational expenses for the 2004-2005 school year for uniforms ($ 350.00), jacket/sweater required for work- study ($ 75.00), and books ($ 115.00).

54. After Student began attending Verbum Dei, Father observed an improvement in the effort he was putting into his academics. Student’s first semester grades for the 2004-2005 school year at Verbum Dei included “Fs” in U.S. history and algebra, “Ds” in English and Catholic religion, “Cs” in Spanish and work study, and an “A” in football. At the end of the second semester, Student had “Fs” in U.S. history, algebra, and “Rel North Am,” a “D” in work study, and “Cs” in English and Spanish. His cumulative grade point average at the end of the school year was a 1.59.

55. No one from Verbum Dei testified at the hearing. There was no testimony regarding the size or teacher-student ratio of Student's classes at Verbum Dei or about the training and qualifications of its teachers. No evidence was provided regarding how the educational program at Verbum Dei was designed to address Student's unique educational or emotional needs or to provide him with educational benefit.

Independent Assessment

56. On October 23rd and November 4, 2004, Student was independently assessed by school psychologist Billie Thomas, following a request by his parents for an assessment to determine his special education eligibility. Ms. Thomas concluded that Student demonstrated a cognitive ability within the average range. In the area of academics, she determined that Student performed significantly below expectations for his age and grade in reading, spelling and arithmetic as measured by the Wide Range Achievement Test 3 (WRAT 3) and the Woodcock Johnson Tests of Achievement III.

From her assessment, Ms. Thomas concluded that Student exhibited a significant discrepancy between his estimated average general ability and his achievement in reading, math, and written language. She also concluded that he exhibited basic psychological processing deficits in visual motor skills and visual perceptual skills. She therefore concluded that Student met the eligibility criteria for a student with a specific learning disability (SLD).

57. As discussed above, Ms. Thomas did not testify at the due process hearing. No evidence was provided regarding her background, training, certifications, current employment, or qualifications as a school psychologist.

58. Ms. Thomas submitted an invoice to the parents in the total amount of $2,100.00 for testing and observation sessions, interviews and consultations regarding Student from October 23, 2004 through December 4, 2004.

59. There is no indication that the District received a copy of Ms. Thomas's psycho- educational assessment report at any time prior the exchange of exhibits in preparation for the due process hearing. The District had not been provided with a copy as of June 13, 2005, when Mr. Gonzales wrote to Ms. Meredith to inquire whether the parents had an assessment conducted of Student's eligibility for special education. Mr. Gonzalez requested that, if such an assessment had been conducted, the parents provide the District with a copy of the report so an IEP team could be convened to review Student's eligibility. He also advised the parent that if the report was provided, "duplicative assessments may be avoided and special education placement and services may be implemented earlier."

EVIDENCE REGARDING COMPENSATORY EDUCATION

60. If compensatory education services were to be awarded, Mr. Jones recommended that Student receive one to two years of mediated learning, in hour-long sessions to be provided initially several times a week. Mr. Jones recommended that the session be provided by an individual who has a master's degree and who is trained in both mediated learning (ML) and the Teacher Expectation - Student Achievement (TESA) methodology that encourages teachers to have high expectations for their students and to use positive belief systems. The ML should initially be in a one-to-one format, but the person providing the service could determine if transition to a small group format would be appropriate.

In addition, Mr. Jones recommended one school year of DIS counseling twice a week for thirty minutes a session. Transition to a small group of up to five students for role playing would be at the discretion of the therapist. After one year, Student's need for ongoing counseling should be reassessed.

LEGAL CONCLUSIONS

I. STATUTE OF LIMITATIONS

1. California Education Code section 56505 subdivision (1) provides:

> Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.[10]

The Individuals with Disabilities in Education Improvements Act of 2004 added a new section outlining an exception to the statute of limitations for cases filed under the Act. Pursuant to 20 U.S.C. section 1415 subdivision (f)(3)(D), the timeline for requesting a due process hearing "shall not apply to a parent if the parent was prevented from requesting the hearing due to - (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or (ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent."

2. Student argues that the 1997 IEP making him eligible for special education as a student with a SLD is still in effect. As a consequence, he argues that the IEP imposed a continuing duty on the District to convene annual IEP and ITP team meetings each year within the three-year statutory limitations of claims period which began on June 25, 2001 through the 2004-2005 school year. In his view, his parents did not learn

[10] This section, with identical language, was previously contained in 56505 subdivision (j).

that the 1997 IEP was no longer in effect until May 2004 when they first learned that the District did not have a copy of Student's IEP in his cumulative fi-le.

The District asserts that Student's father revoked his consent to the 1997 IEP, that it had no continuing duty arising out of the 1997 IEP to convene annual IEP/ITP meetings or to pursue due process, and that any such claims are barred by the three-year statute of limitations pertaining to special education due process hearings

3. As indicated in Findings 7 through 12 and 24, Student's father had actual knowledge by no later than November 1997 that, in his opinion, the District's assessment of Student and the IEP developed from that assessment were not appropriate and that the IEP did not offer Student a free appropriate public education.

These findings further establish that the parents had reason to know of the facts underlying their due process request by no later than November 1997. In addition, there was no evidence that the statute of limitations should have been tolled based upon any specific misrepresentations by the District that it had resolved any of Student's special education issues, or that it withheld any information it was required to provide to the parent. (20 U.S.C. 1415, subdiv. (f) (3)(D).) The parent's discovery in May 2004 that Student's outdated and never implemented IEP was not in his cumulative file does not alter this conclusion.

4. Any claims against the District relating to the development and/or implementation of Student's February 28, 1997 IEP are barred by California's three year statute of limitations. This includes student's claims that the District failed to conduct an appropriate assessment, failed to offer an appropriate placement, failed to provide parents with copies of their rights and/or failed to request a due process hearing to override the parent's refusal to consent to implementation of the IEP.

These findings also establish that Student's father clearly revoked his consent to the February 28, 1997 IEP. The District had no continuing duties arising out of the 1997 IEP after June 25, 2001 to take any action on Student's behalf.

5. Consequently, the District did not deny Student a FAPE as asserted in Issue I, subdivisions (a), (b), and (c).

DUTY TO "CHILD FIND" AND TO ASSESS IN ALL AREAS OF SUSPECTED DISABILITY

6. Student raises two challenges involving the District's duty to have assessed him for special education from June 25, 2001 through the 2004-2005 school year. First, Student asserts that the District violated its "child find" obligation by failing to refer him for a special education assessment beginning on June 26, 2001, based upon its knowledge of his previous eligibility for special education as a student with a specific learning disability, and his predominantly failing grades. Student also asserts that the District failed to assess him in all areas of suspected disability, including educational, social-emotional and psychological, upon referral by his parents.

7. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. §1400 (2005); Cal. Ed. Code § 56000.) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9).) The right to a FAPE arises only after a student is assessed and determined to be eligible for special education.

8. The federal Individuals with Disabilities Education Act (IDEA), and State law impose upon each school district the duty to actively and systematically identify, locate, and assess all children with disabilities who require special education and related services, including children with disabilities who are homeless, who are wards of the

State or who are not enrolled in a public school program. (20 U.S.C. § 1412, subdiv. (a)(3); 34 C.F.R. § 300.125; Cal. Ed. Code §§ 56300 and 56301.) The obligation set forth in this statutory scheme is often referred to as the "child-find" or "seek and serve" obligation. This obligation to identify, locate, and assess applies to "children who are suspected of being a child with a disability... and in need of special education, even though they are advancing from grade to grade." (34 C.F.R. § 300.125, subdiv. (a)(2).) A State must ensure that these child find requirements are implemented by public agencies throughout the State as part of its obligation to ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State. (34 C.F.R. § 300.300, subdiv. (a)(2).) The comments to 34 C.F.R. section 300.300 subdivision (a)(2) note the "crucial role that an effective child find system plays as part of a State's obligation of ensuring that FAPE is available to all children with disabilities." (68 Federal Register No. 48 (March 12, 1999) at p. 12573.)

Under State law, the school district must establish written policies and procedures for a continuous child-find system. (Cal. Ed. Code § 56301.) The policies and procedures must include written notifications to all parents of their rights and the procedure for initiating a referral for assessment. *Id.* Identification procedures shall include "systematic methods of utilizing referrals of students from teachers, parents, agencies, appropriate professional persons, and members of the public," and shall be coordinated with school site procedures for referral of pupils with needs that cannot be met with modification of the regular education program. (Cal. Ed. Code § 56302.) Further, under State law, a child may be referred for special education only after the resources of the regular education program have been considered and, where appropriate, utilized. (Cal. Ed. Code § 56303.)

A referral for assessment means any written request for assessment made by a parent, teacher, or other service provider. (Cal. Ed. Code § 56029.) All referrals for special education and related services shall initiate the assessment process and must be

documented. (Cal. Code Regs., tit. 5, § 3021, subdiv. (a).) "When a verbal referral is made, staff of the school district, special education local plan area, or county office shall offer assistance to the individual in making a request in writing and shall assist the individual if ...request[ed]..." *Id.* "All school staff referrals shall be written..." (Cal. Code Regs., tit. 5, § 3021, subdiv. (b).) In addition, upon initial referral for assessment, parents shall be given a copy of their rights and procedural safeguards. (Cal. Ed. Code § 56301.)

Once a student is referred for an assessment and the parent provides written consent to the assessment plan, the District must assess the student "in all areas related to the suspected disability...." (Cal. Ed. Code § 56320, subdiv. (f).)

8. As indicated in Findings 33 and 34, above, Student's parents did not request a special education assessment of Student from the District, either verbally or in writing, at any time after June 25, 2001. Consequently, the District did not deny Student a FAPE by failing to assess him in all areas of suspected disability as asserted in Issue II.

9. The District's child find duty is not dependent on any request by the parent for special education testing or referral for services. Rather, the duty arises with the District's knowledge of facts tending to establish a suspected disability and a need for an assessment to determine eligibility for IDEA special education services. As indicated in Findings 36 - 38 and 43 - 46, the District denied Student a FAPE by failing to identify him as a student with a disability pursuant to its child find obligation from mid-November 2003 through the end of the 2004-2005 school year, as asserted in Issue I (d).

10. As indicated in Findings 41 and 42, the District did not deny Student a FAPE by failing to identify him as a student with a disability pursuant to its child find obligation beginning on June 25, 2001 for the 2000-2001, 2001-2002, or 2002-2003 school years. Consequently, the District did not deny Student a FAPE as asserted in Issue I (d) from June 25, 2001 through mid-November 2003.

REIMBURSEMENT FOR INDEPENDENT EDUCATIONAL EVALUATION BY BILLIE THOMAS

11. A parent has the right to obtain an independent educational assessment of the pupil from a qualified specialist, at public expense, if the parent disagrees with the assessment obtained by the District, unless the District shows at a due process hearing that its assessment is appropriate. (Cal. Ed. Code § 56329, subdiv. (b).) "If a parent obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free, appropriate public education to the child and may be presented as evidence at a due process hearing...regarding the child." (Cal. Ed. Code § 56329, subdiv. (c).)

12. As indicated in Finding 8, the District has not conducted an assessment of Student since January 1997. In addition, as indicated in Findings 7-12 and 25 and Conclusions 3 and 4 above, any challenge by the parent to the District's January 1997 assessment is barred by the statute of limitation. As a consequence, the independent assessment obtained by the parent from Billie Thomas was not procured for the purpose of challenging the appropriateness of a District assessment. There is therefore no statutory basis for awarding Student reimbursement for the costs of his assessment by Ms. Thomas.

13. As indicated in Findings 56 - 59, the assessment obtained by the parent in November 2004 was not provided to the District in a timely manner to assist it in its efforts to determine whether Student was eligible for special education. Further, as indicated in Findings 47 – 48 and 59, the assessment had been completed during a period of approximately seven months in which the District was actively seeking parental consent to assess Student. There is therefore no equitable basis for awarding reimbursement for this assessment.

ENTITLEMENT TO REIMBURSEMENT AND/OR COMPENSATORY EDUCATION

14. As indicated in Finding 46, the ALJ has concluded that the District denied Student a FAPE beginning in mid-November 2003 through the end of the 2004-2005 school year. As indicated in Findings 49 - 50 and 53, Student was placed by his parents at Verbum Dei for the 2004-2005 school year, and incurred a total of $2,540.00 in tuition and related costs.

15. Parents may be entitled to appropriate relief, including reimbursement for the costs of placement or services that they have independently procured for their child, when the school district has failed to provide a FAPE and the private placement or services are determined to be proper under IDEA and are reasonably calculated to provide educational benefit to the child. *School Committee of the Town of Burlington* v. *Department of Education* (1985) 471 U.S. 359, 369, 105 S. Ct. 1996; *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F. 3d 1489, 1496.

In *Florence County School Dist. Fourv. Carter,* 510 U.S. 7, 13, 113 S.Ct. 361 (1993), the Supreme Court specifically exempted parents from having to meet certain requirements of the IDEA in their unilateral placements. For example, parents are not required to conform their unilateral placement to the content of the student's IEP or provide a placement that is certified by the state. Id. The Court has recognized that the parents' placement does not have to meet a standard as high as a school district's must meet; however, the parents' placement must still meet other requirements of the IDEA, such as providing a placement that addresses the student's needs and provides the student educational benefit. Id.

16. As indicated in Finding 55 above, no evidence was presented regarding the quality or nature of Student's educational program at Verbum Dei. The only objective evidence is that revealed in his Verbum Dei transcripts, outlined at Finding 54, above.

This transcript demonstrates a slight academic improvement, from predominantly failing grades at Compton to three Fs, one D and two Cs.

Although parents are not required to meet the same strict standards of proof regarding the appropriateness of the private placements in which they unilaterally place their child under the *Carter* standard, some evidence must be provided. In this case, the evidence produced by the Student persuasively established that Student received educational benefit from his mediated learning sessions with Mr. Jones, not from his placement at Verbum Dei. The request for reimbursement for costs and tuition from Verbum Dei is therefore denied.

17. Court decisions subsequent to *Burlington* have also extended relief in the form of compensatory education to students who have been denied a FAPE. (See, e.g., *Lester H.* v. *K. Gilhool and the Chester Upland School District* (3rd Cir. 1990) 916 F. 2d 865; *Miener v. State of Missouri* (8th Cir. 1986) 800 F.2d 749.) Compensatory education is an equitable remedy. There is no obligation to provide day-for-day or hour-for-hour compensation. "Appropriate relief is relief designed to ensure that the Student is appropriately educated within the meaning of the IDEA." *Student W. v. Puyallup School District* (9th Cir.1994) 31 F.3d 1489, 1497.

18. To remedy the denial of FAPE alleged, Student requested a total of three hours a week of mediated learning sessions for up to two years and twice weekly thirty-minute counseling sessions for one school year. Student relies on the testimony of Robert Jones to support his request.

19. As indicated in Findings 38 and 60, Mr. Jones's testimony, including his recommendation regarding compensatory education services, is entitled to great weight. The ALJ concludes that Student is entitled to compensatory education services in the form of one-to-one mediated learning sessions and counseling services in the amount and frequency outlined below.

ORDER

20. The District is hereby ordered to provide Student with compensatory education services as follows:

- One-to-one mediated learning sessions for one school year, at a frequency of two one-hour sessions each week. Sessions shall focus on Student's current academic weaknesses as determined by the District's assessment or other current data. The mediated learning sessions shall be provided by an individual who has a master's degree and is trained in both mediated learning techniques and the Teacher Expectation - Student Achievement (TESA) methodology.
- Individual DIS counseling services twice a week for thirty minutes a session for one school year, to focus on self esteem issues. At the discretion of the therapist, Student may transition to a small group of up to five students for role playing.

21. Student's remaining requests for relief are hereby denied.

PREVAILING PARTY

22. Pursuant to California Education Code § 56507(d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute:

Issue I (a):	The District prevailed.
Issue I (b):	The District prevailed.
Issue I (c):	The District and the Student each partially prevailed.
Issue 1(d):	The District and the Student each partially prevailed.

Issue II: The District prevailed.

Issue III: The District prevailed.

Issue IV: The District and the Student each partially prevailed.

DATED: September 27, 2005

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MARILYN A. WOOLLARD

Administrative Law Judge

Office of Administrative Hearings

RIGHT TO APPEAL THIS DECISION

23. 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 ninety days of receipt of this decision. California Education Code § 56505, subdivision (k).