

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

In the Matter of

STUDENT,

Petitioner,

v.

POWAY UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2005080597

DECISION

Robert D. Iafe, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, heard this matter on February 21, 22, 23, 27, 28, and March 1, 2006, in Poway, California.

Petitioner Student (Student) was represented by attorney Geralyn Clancy of Varma & Clancy. Student's Mother (Mother) was present throughout the hearing. Student's Father (Father) and Student were also present during certain portions of the hearing.

Respondent Poway Unified School District (District) was represented by attorneys Justin Shinnfield and Christine D. Lovely of Atkinson, Andelson, Loya, Ruud & Romo. District representatives Melanie Black and Theresa Kurtz, special education directors, and Emily Shieh and Tina Ziegler, program specialists, were also present during certain portions of the hearing.

The record was opened on February 21, 2006. Testimony was taken and evidence was offered and received through March 1, 2006. The record remained open, at the request of the parties, to submit written argument by March 8, 2006. Written argument was received

from Student and District, the record was closed, and the matter was submitted on March 8, 2006.

ISSUES

ISSUE 1: DID DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION FOR THE 2002- 2003 SCHOOL YEAR, INCLUDING THE 2003 EXTENDED SCHOOL YEAR?

STUDENT ALLEGED SUBSTANTIVE AND PROCEDURAL VIOLATIONS INCLUDING:

- A. District failed to formulate an individualized educational program to meet Student's unique needs in auditory processing, reading, and writing.
- B. District failed to notify Mother and Father (collectively Parents) of the proposed high school placement for Student.

ISSUE 2: DID DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION FOR THE 2003- 2004 SCHOOL YEAR, INCLUDING THE 2004 EXTENDED SCHOOL YEAR?

STUDENT ALLEGED SUBSTANTIVE AND PROCEDURAL VIOLATIONS INCLUDING:

- A. District failed to formulate an educational program to meet Student's unique needs in auditory processing and auditory memory for writing.
- B. District prevented Parents from meaningful participation in the formulation of an education by providing periodic progress reports with minimal information.

ISSUE 3: DID DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION FOR THE 2004- 2005 SCHOOL YEAR, INCLUDING THE 2005 EXTENDED SCHOOL YEAR?

STUDENT ALLEGED SUBSTANTIVE AND PROCEDURAL VIOLATIONS INCLUDING:

- A. District failed to formulate an educational program to meet Student's unique needs in auditory processing.

- B. District failed to have all required members present to formulate an individualized education program for Student.

ISSUE 4: DID DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION FOR THE 2005- 2006 SCHOOL YEAR? STUDENT ALLEGED SUBSTANTIVE AND PROCEDURAL VIOLATIONS INCLUDING:

- A. District failed to formulate an educational program to meet Student's unique needs in auditory processing.
- B. District's letter dated June 28, 2005, with a proposal for an individualized educational plan, met the requirements of written offer of placement and services for Student.

ISSUE 5: IS STUDENT ENTITLED TO COMPENSATORY EDUCATION IN THE FORM OF EDUCATIONAL SERVICES DUE TO DISTRICT'S FAILURE TO OFFER OR PROVIDE STUDENT WITH A FREE APPROPRIATE PUBLIC EDUCATION?

ISSUE 6: ARE STUDENT'S PARENTS ENTITLED TO REIMBURSEMENT FOR INDEPENDENT EDUCATIONAL EVALUATIONS IN THE AREAS OF SPEECH-LANGUAGE AND AUDIOLOGY AND THE RELATED EXPENSES OF PARTICIPATION IN A MEETING TO DISCUSS THE INDIVIDUALIZED EDUCATION PROGRAM FOR STUDENT?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Student is seventeen years old and is eligible for special education and related services as a child with a Specific Learning Disability. At the time his due process hearing request was filed on May 4, 2005, Student was 16 years old and in the 11th Grade at

the District's Poway High School, located in Poway, California. During the entire time period at issue, Student resided with his parents within the geographical boundaries of the District.

2. Student was first determined eligible for special education at the end of the 5th Grade because of his SLD.

EVALUATIONS AND SPECIAL EDUCATION BACKGROUND BEFORE THE 2002-2003 SCHOOL YEAR (BEFORE HIGH SCHOOL)

3. The most recently proposed Individualized Education Program (IEP) for Student offered in June 2005 was based, in part, on information from evaluations of Student conducted before he attended high school. In the fall of 1998, District assessed Student to determine if there was a need for special education services. Student was in the 5th Grade at this time. District's overall assessment of Student revealed Student did not qualify for special education services at the time. Parent then arranged to have Student evaluated outside the school setting by an educational therapist, a clinical audiologist, and a clinical psychologist/neuropsychologist.

4. Nanci Engle, M.Ed., Educational Therapist, prepared an Independent Evaluation Report dated March 5, 1999. This report summarized that Student exhibited delays in expressive language, had a slower processing speed for language-based learning, and may have been showing indications of an auditory processing disorder. Among other things, Dr. Engle's report recommended additional testing to determine, or rule out, the presence of an auditory processing disorder; additional testing by a speech and language professional for improvement of expressive language; and that Student would benefit from a program called Fast ForWord for improvement of auditory processing speed, attention, and auditory memory. The IEP team received and reviewed this report on April 27, 1999.

5. Carol J. Atkins, M.A., CCC-A, Clinical Audiologist, prepared a Special Diagnostic Audiometric Evaluation dated March 19, 1999 (Atkins I Report). This report concluded that Student demonstrated auditory processing difficulties in certain areas with

deficits in temporal processing and bilateral integration and processing as well as asymmetrical results between the right and left ears, and that Student's problems would lead to difficulty in reading and writing skills, among other things. The Atkins I Report also recommended certain counseling, management and therapy, including one session of Fast ForWord Auditory Training, to be followed by testing by a speech language pathologist or reading specialist for possible further remediation. The IEP team also received and reviewed this report on April 27, 1999.

6. Marc D. Lewkowicz, Ph.D., Clinical and Neuropsychologist, prepared a Neuropsychological Evaluation report (Lewkowicz Report) from his examination of Student on April 21, 1999, and May 5, 1999. Dr. Lewkowicz diagnosed Student with Disorder of Reading and Attention Deficit/Hyperactivity Disorder, Predominantly Inattentive Type. In particular, the Lewkowicz Report identified Student's reading rate and accuracy while reading as very impaired and noted Student had difficulties with spelling. This report also contained numerous recommendations for dealing with these diagnoses in the school setting. The IEP team received and reviewed this report on June 14, 1999.

7. Upon consideration of these independent educational evaluations, the IEP team first determined Student was eligible for special education because of a Specific Learning Disability on June 14, 1999, at the end of the 5th Grade. Student's initial IEP was dated June 14, 1999, and provided for placement in a Resource Specialist Program (RSP) for a portion of the time in school. This IEP noted Student's disability affects involvement and progress in the general curriculum because of a severe discrepancy in Student's non-verbal ability and achievement in reading (decoding), writing, with "a weakness in auditory processing." As identified in the IEP, Student's specific areas of educational need to be addressed in the goals and objectives of the IEP included "reading, writing and organizational skills."

8. Because of Student's weaknesses in the areas of reading rate decoding, auditory working memory, and listening in noise, the team referred Student for training in

District's Fast ForWord Pilot Program with the District's certified provider Helen Williams, M.A., CCC-SLP (Williams). After Student successfully completed the program during the summer of 1999, Williams wrote a Post Fast ForWord Evaluation Summary dated September 14, 1999. In the Summary and Impressions portion of this report, Williams noted:

[Student] continues to have relative weaknesses in reading rate and working memory that affect his reading comprehension. Additional ways of helping [Student] with this area should be explored by the IEP team.

Outside the school setting, Parents began taking Student to Lynne Thrope, Ph.D., a Reading Specialist, to help with his reading disorder. Dr. Thrope saw Student several times while he attended middle school.

9. Student's IEPs during middle school contained many of the same services and accommodations from the 6th Grade through the 8th Grade. These included a portion of time during the school day in RSP pullout, a small group setting, allowance of extended time for work and tests, use of interpretive aids, word lists, a spell checker, graphic organizers, and the clarification and restating of directions when possible.

10. Student's first triennial review was due just before he was to start the 9th Grade. As part of this review, Janice Gapasin, M.Ed., a credentialed school psychologist for District, prepared a psychoeducational report entitled Confidential Psychological Report dated December 21, 2001 (Gapasin Report), concerning Student during the middle of the 8th Grade.

11. The summary portion of the Gapasin Report noted that after conducting a record review, brief interviews, observation and psycho-educational testing, "an auditory processing deficit was identified." The summary also identified Student's severe achievement lags in the area of broad written language.

EVALUATIONS AND STUDENT'S IEPs FOR THE 2002-2003 SCHOOL YEAR (9TH GRADE)

12. Student's IEP dated January 14, 2002, was formulated in the middle of the 8th Grade. IEP team members from District's middle school staff prepared it after a triennial review. The team reviewed the Gapasin Report and Student's current placement with Student receiving support at the RSP level to address reading comprehension, written language, and his organization/study skills. The team identified Student's learning preference as "a highly structured, well-organized setting with emphasis on visuals, repetition, and multi-modal approaches." The team noted when Student was in the 8th Grade, Student's standardized test results presented comprehension and reading levels at the sixth grade equivalent.

13. Among the then present levels of educational performance for Student, the IEP noted a severe discrepancy between ability and achievement in the area of broad written language due to a "deficit in auditory memory." The IEP team meeting notes also reflected that, although Student's cognitive skills were within the high average range, "significant processing deficits" were demonstrated with auditory memory. In identifying Student's unique needs, the notes also stated it took Student an extended period of time to read, especially out loud, Student required more time to complete work, and Student had difficulty with spelling.

14. With this information at hand, the IEP team formulated a single annual goal for Student in the area of need identified as Written Language.¹ No goals were formulated to address Student's low reading comprehension. No goals were formulated to address Student's significant auditory processing deficits. No goals were formulated to address

¹ The single goal provided: "By 1-03, [Student] will write a 5 paragraph essay on a given topic, using proper mechanics, spelling, and grammar with 85% accuracy in 3 of 5 trials, as measured by teacher records, observations, and writing proficiency."

Student's need to reduce the amount of time needed to complete his work. No goals were formulated to address Student's difficulty with spelling.

15. Mother signed the box marked Parental Consent on January 14, 2002, affirming that she had the opportunity to help develop the IEP and she agreed with the goals, objectives, placement, and service recommendations. Although District provided a Notice of Procedural Safeguards to Mother, at the time she signed this IEP Mother believed she had to accept the terms of the IEP as presented by District.

16. This 8th Grade IEP placed Student in classrooms at District's Twin Peaks Middle School in January of 2002. Mindy Karp (Karp), a resource specialist for District, was the case manager for Student at Poway High School. Karp explained that under normal circumstances, District would usually conduct a separate meeting of an IEP transition team, including both middle school and high school representatives, for a student entering Poway High School from the 8th Grade. This transition team meeting may or may not occur on the same date as the annual IEP team meeting. The meeting typically took place during the 8th Grade, when the parents of a student would meet with their case manager from the Twin Peaks middle school and the resource specialist from Poway High to develop a program. The parents and the student would then participate in choosing the classes for the freshman year. However, there was no transition IEP team meeting for Student from middle school to high school. With this 8th Grade IEP in hand District placed Student in a 9th Grade RSP class at Poway High called the Learning Strategies 1 (L/STRAT) class, without the participation of Parents and Student at any transition IEP team meeting.

17. As described by District representatives, the 9th Grade L/STRAT class in which Student was placed was a study skills and homework completion class to help students with their general education classes. The study skills portion of the class discussed use of graphic organizers, note taking, practice writing for proficiency examinations, and skills that go along with test taking strategies. The IEP at the beginning of 9th Grade provided the amount of time Student would spend outside the general education

classroom, for special education services, was 10% of the school day. Accommodations for Student in the general education class included extended time and spell checker, with clarification/restating of directions and information when possible. This IEP provided for graphic visual organizers when needed and audio tapes when available.

18. The first IEP meeting to discuss Student's transition and placement in high school did not occur until more than three months after Student began attending District's high school. The IEP dated December 13, 2002, was the first education program for Student prepared with the input from IEP team members on the high school staff. Based on the information available to the team, the December 13, 2002, IEP again noted the Student's deficit in auditory memory. The meeting notes reflected the IEP team discussed Student's then current progress in class. Student's grades included three Cs and the notes reflected Student had some missing assignments. Additional comments appeared in the notes such as "will talk to [teacher] about clarification of projects and extended time on projects" and "will e-mail [teacher] about extended time." A parent concern raised at the meeting was that Student gets all his work completed.

19. The IEP team formulated a single annual goal for Student in the area of need identified as written expression.² There was no baseline information unique to Student in this IEP. Student's baseline for this area of need was identified as "prepare for the CAHSEE, improve writing skills."³

20. The IEP team did not formulate any other goals for Student. The IEP team did not formulate any goals to address Student's low reading comprehension. The IEP team

² The single goal provided: "By 12/03, when given a writing prompt, [Student] will write an expository essay which contains an intro, body, and conclusion each with a clearly definable topic sent. and supporting details with 80% accuracy as measured by teacher record and work samples" [sic].

³ CAHSEE is the acronym for the California High School Exit Exam

did not formulate any goals to address Student's significant auditory processing deficits. The IEP team did not formulate any goals to address Student's difficulty with spelling.

21. To implement this goal in the second half of the 9th Grade, the IEP team continued Student's placement in the RSP L/STRAT class. In this class they worked on practicing writing prompts, practicing writing essays which pertained to the proficiency exams using graphic organizers and pre-writing techniques. The IEP provided the amount of time Student would spend outside the general education classroom, for special education services, was increased to 13% of the school day. Accommodations for Student in the general education class included copies of notes and graphic organizers when needed, extended time, spell checkers, and clarification of directions. The IEP provided for audio tapes for Student when available "due to eye strength and tiring" but made no mention of the reading weaknesses of Student.

22. Mother signed the box marked Parental Consent on December 13, 2002, affirming that she had the opportunity to help develop the IEP and she agreed with the goals, objectives, placement, and service recommendations. Although District provided a Notice of Procedural Safeguards to Mother, at the time she signed this IEP Mother believed she had to accept the terms of the IEP as presented by District.

23. After this December, 2002, IEP meeting District provided a brief summary of the information contained in Student's December 13, 2002, IEP to Student's teachers. This summary, entitled Confidential Student Profile, only identified the primary disability, some classroom modifications (extended time, copy of notes, and graphic organizers, when needed), and a summary description of the single IEP goal for Student. There was no evidence District provided a Confidential Student Profile of Student to his teachers before December 2002. District also provided a written periodic progress report to Parents entitled Individualized Education Program Goal Progress Report. These reports were sent to Parents at regular six week intervals during the school years to communicate the progress of Student toward his IEP goals. District's progress reports, consisted of the date of the report

and a check mark in a column to denote "Sufficient Progress to Meet Goal" without providing any objective data or measurable criteria of Student's progress.

EVALUATIONS AND STUDENT'S IEPs FOR THE 2003-2004 SCHOOL YEAR (10TH GRADE)

24. The December 2002 IEP, described in Factual Findings 18 through 21, was in place for the first half of the 10th Grade until the team met on December 8, 2003, for an annual review. For the second half of the 10th Grade, Student's needs in the areas of reading, auditory processing and spelling remained the same. This new IEP again contained a single goal which was virtually identical to the goal in the IEP dated December 13, 2002, for the previous year.⁴ The only area of need addressed by this goal was written expression. There was no baseline information for this written expression need that was unique to Student in this IEP. The baseline for Student was identified as "prepare for the CAHSEE, improve writing skills."

25. No other goals were formulated for Student. The IEP team did not formulate any goals to address Student's low reading comprehension. The IEP team did not formulate any goals to address Student's significant auditory processing deficits. The IEP team did not formulate any goals to address Student's difficulty with spelling.

26. At the conclusion of this meeting, a new IEP dated December 8, 2003, was formulated for Student but the program remained essentially the same. To implement the writing goal in the IEP, Student was placed in District's L/STRAT class for 10th Grade students. The L/STRAT class for the 10th Grade was similar to the 9th Grade L/STRAT class except there was a greater emphasis and focus on homework. There was not as much

⁴ The single goal provided: "By 12/04, when given a writing prompt, [Student] will write an expository essay which contains an intro, body, and conclusion each with a clearly definable topic sent. and supporting details with 90% accuracy as measured by teacher record and work samples." [sic]

emphasis on study skills in the 10th Grade class because study skills was typically part of the 9th Grade curriculum. This IEP provided the amount of time Student would spend outside the general education classroom for special education services was again 13% of the school day. Accommodations in the general education classroom included copies of notes and graphic organizers, when needed, and extended time on tests, quizzes and projects. The IEP also provided for audio tapes for Student when available "due to eye strength and tiring" but made no mention of the reading weaknesses of Student.

EVALUATIONS AND STUDENT'S IEP FOR THE 2004-2005 SCHOOL YEAR (11TH GRADE)

27. Student's second triennial review was due in early December 2004 while Student was in the 11th Grade. As part of this review, Dana Duplan, M.A., M.S. (Duplan), school psychologist for District, prepared a confidential report entitled Psychoeducational Report and dated November 29, 2004, concerning Student (Duplan Report). Duplan gathered the background information for his report from Student's special education file with the District, most notably from previous psychoeducational reports about Student. From his review of District records regarding eligibility, he observed that Student qualified for special education under the Specific Learning Disability category, noting Student's auditory processing weaknesses and academic difficulties in written language skills.

28. In conducting his evaluation, Duplan administered two standardized tests to Student including the Kaufman Brief Intelligence Test (KBIT) and the Woodcock-Johnson III Achievement Test (WJ-III). On the KBIT, Student earned a Standard Score of 107 on the Vocabulary subtest, and a Standard Score of 119 on the Matrices subtest. The scores on these subtests resulted in a Standard Score of 114 for Student's Composite IQ which classified Student's intellectual ability as above average. On the WJ-III, Student earned Standard Scores of 97 on the Letter-Word ID subtest and 110 on the Calculation subtest, both considered average scores. However, on the Passage Comprehension subtest, Student earned a Standard Score of 83, which is considered a below average score.

29. District resource specialists Karp and Diana Loiewski administered other tests for the Duplan Report. On the Test of Written Language - 3 (TOWL-3) Loiewski reported Student earned the following standard scores: a 6 on the Vocabulary subtest (below average), a 7 on the Spelling subtest (below average), a 4 on the Style subtest (well below average), a 6 on the Logical Sentences subtest (below average), and a 4 on Contextual Conventions subtest (well below average).

30. The Summary and Recommendations portion of Duplan's report noted Student's history includes "auditory processing weaknesses, and deficits in written language tasks." There was also a reference to Student's "special education instruction relative to auditory processing deficits, along with their impact on academic performance."

31. All required members of the IEP team met on December 2, 2004, for both an Annual Review and a Triennial Review of Student's educational plan. Portions of a proposed IEP, with certain information already typed in by District, were brought to the meeting. The preprinted portion of the proposed IEP, in the area to describe how the disability affected Student, noted: "A severe discrepancy exists between ability and achievement in the area of broad written language."⁵ At this meeting, the IEP team discussed Student's current progress in class. Denise Butterweck, Student's teacher for American Literature, spoke about the D grade Student earned in her class for the previous 12-week grading period and her concern about his writing. The information in the Duplan Report was also provided to the IEP team.

⁵ This language was identical to the previous year's IEP except the end of the sentence in the previous year included the words "due to a deficit in auditory memory." In spite of repeated references to auditory processing deficits in the Duplan Report, there was no mention of this need of Student in the proposed IEP for the 11th Grade

32. District proposed a single annual goal for Student in the area of need identified as written expression.⁶ Student's baseline for this area of need was left blank. The IEP team did not formulate any goals to address Student's auditory processing deficits or his written language deficits as found in spelling, logical sentences and contextual conventions.

33. During this meeting, District offered to place Student in a learning strategies class directly linked to Student's American Literature class identified as the Learning Strategies II Link to American Literature (L/STRAT Link) class. The L/STRAT Link class was briefly described at the meeting, but Student's Mother wanted additional information about the class before agreeing to placement. Mother did not sign the box marked Parental Consent during the IEP meeting on December 2, 2004.

34. This IEP meeting was followed by several meetings of some of the IEP team members and Parents regarding placement in December, 2004, and in January, 2005, with no agreement on Student's IEP. By January 21, 2005, District offered that Student attend the L/STRAT Link class for a trial period to be reviewed within 15 days of the start of the second semester. District represented that the L/STRAT Link class proposed for Student was designed specifically to link with Student's American Literature class to provide support for that class.

35. As described by District, the L/STRAT Link class was to provide small group instruction on the work being done in the American Literature class, to provide vocabulary strategies and to help on the junior paper that directly linked to the class. The Students were described as students who were in Student's American Literature class with Student's same

⁶ The single goal provided: "By 12/05, [Student] will demonstrate an understanding of the elements of discourse (e.g., purpose, speaker, audience, form) when completing narrative, expository, persuasive, or descriptive writing assign. with 75% accuracy as measured by teach/stud. rec." [sic]

teacher. The L/STRAT teacher was described as being knowledgeable about the general education English class. In short, the teacher was to be an additional resource for Student, a resource “link” to understanding any problems Student encountered in the class.

36. Student attended this L/STRAT Link class at the beginning of the second semester on a trial basis. On the first day of class, the resource teacher described the class as a “study hall” where students should do their English homework first, and then do any other homework they wanted to do. While Student attended this class there was nothing for the students to do separately from their homework. The teacher explained if a student got a C in the English class, the student would also get a C in this linked class. Student received little assistance from this class other than having some additional time to do homework. Before the 15-day period was over, Student transferred out of this class.

EVALUATIONS AND STUDENT’S IEP FOR THE 2005-2006 SCHOOL YEAR (12TH GRADE)

37. Parents did not agree with the proposed educational program District offered to Student and arranged for independent educational evaluations. On April 12 and 13, 2005, Kristy Welch King, M.S., CCC, (King), a Speech-Language Pathologist with Hein Speech- Language Pathology, Inc., conducted a comprehensive speech-language evaluation of Student. King earned a Master’s degree in Speech-Language Pathology in 2002 and has been a California licensed speech-language pathologist since 2003. Her work at Hein Speech-Language Pathology, Inc., is directly supervised by Joanne G. Hein, M.S., CCC, who has been in private practice for 17 years and also contracts with some school districts.

38. King’s Speech-Language Pathology Evaluation Report (King Report) identified many speech-language weaknesses that would interfere with Student’s academic success. Of some three dozen diagnostic tests and subtests, Student earned scores within normal limits to above average on 12 subtests. He scored in the low average range on seven subtests, and he scored in the impaired range on 16 subtests. District had not tested Student in all these areas. Student also had significant difficulties with a screening test for auditory processing disorders and was referred for an evaluation by audiologist Atkins at a later time.

39. The King Report also formulated three functional Annual Goals for Student including a goal for Receptive Language (to target skills for following directions and being able to understand factual information and abstract inferential information, for both auditory and printed input); a goal for Expressive Language (to target areas of need in word retrieval, syntax, word usage, and the formulation of his responses in both verbal and written material); and a goal for Pragmatic (Social) Language (to target his social language needs with peers, with adults, and in other environments). Each of these Annual Goals included a baseline describing the then current level of performance and several interim Benchmark/Short Term Goals. This report also recommended treatment to consist of two hours per week of direct, individual speech-language therapy per week. The King Report was reviewed and approved by supervisor Hein, who agreed with the test results and recommendations of King.

40. On May 2, 2005, Atkins, who had evaluated Student in March, 1999, saw Student for a follow up auditory processing evaluation to determine then current auditory processing skills. Atkins holds a Master's Degree in Audiology and has over thirty years of experience as a clinical audiologist in both private practice and hospital settings. Her most recent hospital position was Senior Staff Clinical Audiologist at Children's Hospital and Health Center in San Diego, a position she held for nine years. Atkins has also taught as an instructor in the field of audiology at several colleges including Whittier College, Chapman College, Saddleback Community College, and the California State University at Los Angeles. She was an Associate Professor of Audiology at the California State University at Long Beach for 10 years.

41. After her evaluation, Atkins prepared a written Special Diagnostic Audiometric Evaluation dated May 2, 2005 (Atkins II Report). The Atkins II Report determined Student's peripheral hearing was within normal limits and confirmed a diagnosis of Auditory Processing Disorder. The Atkins II Report provided history, testing results, diagnosis, and recommendations for Student's disordered auditory processing skills in the

areas of auditory closure, auditory integration, and temporal resolution. Upon reviewing District's assessments for the triennial review, Atkins noted that testing for auditory processing disorder was not performed.

42. To address Student's deficits, Atkins identified a three pronged approach which included auditory processing therapy, management of the sound signal, and self-help strategies for Student. In particular, the Atkins II Report recommended auditory processing therapy to improve several skill areas, including auditory closure skills by a speech-language pathologist or audiologist; auditory integration skills by a specially trained speech-language pathologist or an audiologist, typically requiring 12-16 sessions with follow up; and temporal resolution skills by a speech-language pathologist. Atkins noted Student had benefited from previous therapy and his reading ability has shown improvement after intervention with reading specialist Dr. Thrope. For each of the three auditory skill areas the Atkins II Report also contained measurable goals and objectives. Atkins provided numerous recommendations to address Student's deficits in the school setting, including a dozen classroom management strategies. Atkins also recommended self-advocacy skill development for Student to include more than a half dozen strategies to process auditory information. She recommended provision of the Samonas Listening Therapy Program. Atkins also recommended the continuation of reading and spelling tutoring for Student.

43. Members of the IEP team met on June 21, 2005, to review the independent educational evaluations of Student by King and Atkins, and to discuss placement in the 12th Grade for the 2005-2006 school year. Parents brought Speech-Language Pathologists Kristy King and Joanne Hein, and Reading Specialist Lynn Thrope, Ph.D., to the meeting to help explain the findings and recommendations for Student in the evaluations.

44. Dr. Thrope brought extensive experience as a reading specialist to the IEP team meeting. She holds a Master's degree in Reading and Language Education and a Doctorate in Reading Education. She has worked as a reading specialist and has designed reading programs for private enterprise and for public school districts for over 20 years. Dr.

Thrope had worked with Student periodically during the 9th and 10th Grades and extensively during the 11th Grade. In addition to her own working knowledge of Student, Dr. Thrope reviewed Student's results on the Test of Written Language Third Edition (TOWL-3) administered by District Educational Specialist Diana Loiewski on November 4, 2004. Student's standard scores ranged from poor to below average on five of the eight subtests of the TOWL-3: they included a standard score of 6 in Vocabulary (below average), a 7 in Spelling (below average), a 4 in Style (poor), a 6 in Logical Sentences (below Average), and a 4 in Conventions (poor).

45. Dr. Thrope identified four areas of treatment to address Student's reading deficits including decoding, vocabulary, comprehension and writing. Dr. Thrope testified at hearing that the intensive intervention Student needed amounted to one and one-half hours per day, or 6 hours per week. She explained that because Student had not been reading properly well into his teen years, the intervention should be provided by a therapist who held a Ph.D., or least someone who held a Masters degree with a minimum of three years of clinical experience. Such intensive intervention to work on pre-reading and pre-writing skills was needed to remediate Student's deficits in reading and written language. The team was not able to reach agreement on an educational plan during this meeting.

46. A week after the meeting, and by letter dated June 27, 2005, District proposed the following placement and services for Student:

Placement in the Resource Specialist Program at District's High School;

·Instruction by credentialed teachers who are qualified to meet Student's educational needs;

Participation in 15% of the school day with direct special education service in the following two areas:

- One self-contained L/English 7-8 class to address written language needs (goal proposed at 12-2-04 IEP);
- Two 30-minute individual speech/language sessions to address expressive and receptive language needs (parent proposed goal #1 and #2 at 6-21-05 IEP);

Participation in general education environment for remainder of the school day with consultative or collaborative support from resource specialist program staff;

RSP support of ITP activities in the areas of college prep coursework, participation in extracurricular sports, and college research;

Provision of necessary supplemental aids and services: extended time on tests and quizzes, one week extension for lengthy written assignments, tests taken in special education setting and administered by special education staff, use of graphic organizers for lengthy written assignments, use of a spell check device, preferential seating, extra set of class notes, clarification of directions, additional wait-time for verbal responses, frequent breaks;

Parents informed of progress every six weeks through a progress summary of annotated goals and objectives;

IEP placement, program, and services will begin on August 25, 2005;

An IEP team meeting will be held by October 3, 2005, to review [Student's] progress.

47. Soon after proposing this plan, and by letter dated July 13, 2005, District asserted it first learned that parents "suspected Central Auditory Processing as a possible area of disability" at the time parents presented the Atkins II Report to the District for the June 21, 2005, IEP team meeting. Based on this assertion, District refused to reimburse parents for the independent evaluation by Atkins and requested parents sign an Evaluation Plan for a Central Auditory Processing Disorder (CAPD) Evaluation.

48. In this letter, District also refused provision of Samonas Listening Therapy Program because District asserted it needed to complete a CAPD assessment and review its own results before offering any therapy for this disorder. District proposed to "continue discussion of possible need for any type of auditory processing therapy until District completes its assessments and presents its results." In support of its refusal to implement therapy, District identified numerous documents in its files including the Gapasin Report; the Duplan Report; the King Report; the Atkins II Report; and Student's IEPs for 2002, 2003, 2004, and 2005. In spite of District's assertion that Student's auditory processing was a "possible area of disability," these documents referred to Student's auditory processing deficit since December 2001.

49. In July 2005, Student began speech-language therapy sessions with King for one hour per week. At the time of the hearing, King had seen Student about 20 times since July. King did not believe this average of three times per month was sufficient but she understood Student's parents could not afford to pay for more sessions. During this time, King reported Student was making progress toward the goals King had formulated but much additional work was needed. King explained that Student required intensive training for strategies and skills to understand language and to incorporate language into his academics. Moreover, the older a person gets, the more time it takes to implement or to increase a skill that a person is lacking. In other words, Student has spent 16 years of doing

things one way which must be unlearned and replaced by new strategies and skills to be learned in therapy.

50. During the 2004-2005 school year, Student received specialized reading instruction from Dr. Thrope. Beginning before July 2005 Student received specialized reading instruction from Dr. Thrope for the 2005-2006 school year as well. Student reported receiving much help from this one to one instruction. Dr. Thrope has seen improvement in Student's skills, but still recommended a continued course of intense intervention and tutoring.

APPLICABLE LAW

1. Under the amended Individuals with Disabilities Education Act (IDEA) and State law, children with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the State educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(8).) "Special education" is defined as specially designed instruction, at no cost to the parents that is provided to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(25); Ed. Code, § 56031.) "Related services" means transportation and such developmental, corrective, and supportive services as may be required to assist the child to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363(a).)

2. The analysis of whether a student has been provided a FAPE includes a determination of whether the proposed placement was substantively appropriate and whether appropriate procedural steps were followed. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 206-207 (Rowley).)

3. The standard for determining whether the District substantively offered Student a FAPE involves the following three factors: whether the program was designed to address Student's unique needs; whether the program was reasonably calculated to provide

him with educational benefit; and whether the program conformed to his IEP. (20 U.S.C. § 1400 et seq.; *Rowley supra*, 458 U.S. 176 (1982).)

4. In *Rowley*, the Supreme Court described the appropriate level of instruction and services that must be provided to students with disabilities in order to satisfy the IDEA. The Court held that the IDEA does not require that a student be provided with the best available special education instruction or services, or that those services maximize a student's potential. The Court stated that "the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the child." (*Rowley supra*, 458 U.S. at 200.) Moreover, as long as a school district provides an appropriate education, methodology is left up to the school's discretion. (*Id.* at 208.)

5. Parents of children with disabilities are also provided procedural protections under the IDEA. (20 U.S.C. § 1400, et seq.) The Supreme Court noted in *Rowley* that "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation" at every step "as it did upon the measurement of the resulting IEP." (*Rowley supra*, 458 U.S. at 205-206.) Moreover, a parent is a required member of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.344(a)(1); Ed. Code, § 56341, subd. (b)(1).) The IEP team must consider the concerns of the parents for enhancing their child's education throughout the child's education.

6. The Supreme Court in *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA. However, procedural flaws do not automatically require a finding of a denial of a FAPE. Procedural violations may constitute a denial of FAPE only if the procedural inadequacies impeded the child's right to a FAPE, caused a deprivation of educational benefits, or significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); see *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

7. Prior to changing the educational placement of a child, a local educational agency has the obligation to provide written notice of the proposed new placement. (20 U.S.C. 1415(b)(3)(A) and (B); Ed. Code, § 56500.4). Such written notice of an offer creates a clear record of when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. (*Union School District v. Smith* (9th Cir. 1994) 15 F. 3d. 1519, 1526 (*Union*).)

8. In addition to special education instruction and services during the regular school year, extended school year services shall be provided to individuals with handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (34 C.F.R. § 300.309; 5 C.C.R. § 3043; Ed. Code, § 56345, subd. (b)(3).)

9. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (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.) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program for the student. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code § 56320, subd.(e), (f).) Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code § 56320, subd. (a), (b).)

10. Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed.

Code §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2), (3); Ed. Code § 56320, subd. (a), (b).)

11. When a parent disagrees with an assessment obtained by the public educational agency, the parent has the right to an independent educational evaluation (IEE) from qualified specialists at public expense unless the educational agency is able to demonstrate at a due process hearing that its assessment was appropriate. (Ed. Code § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code § 56329, subd. (c).) An IEE obtained at private expense must be considered by the district in any decision concerning a FAPE for the child. (34 C.F.R. § 300.502(c)(1); Ed. Code § 56329, subd. (c).)

12. Each meeting to develop, review, or revise an IEP shall be conducted by an IEP team which includes at least one parent, or parent representative, or both; at least one regular education teacher if the pupil is in the regular education environment; at least one special education teacher of the pupil; a representative of the local educational agency; an individual who can interpret the instructional implications of the assessment results; other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the parent, guardian, or local educational agency; and whenever appropriate, the individual with exceptional needs. (Ed. Code § 56341, subd. (a), (b).)

13. Compensatory education is an equitable remedy which may be available when a school district has denied a student a FAPE. (*Parents of Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Student W.*)). In fashioning appropriate

equitable relief the conduct of both parties should be reviewed, along with the nature of the relief requested, to determine whether an award of compensatory education is appropriate. (*Ibid.*) Courts have explained that the purpose of compensatory relief is to replace lost educational services and to ensure that the student is appropriately educated within the meaning of the IDEA. (*Id.* at p. 1497; *Todd v. Andrews* (11th Cir. 1991) 933 F.2d 1576; *Moubry v. Independent School District No. 696*, (8th Cir. 1996) 951 F.Supp. 867.) There is, however, no obligation to compensate the student by providing a day of education for each educational day lost. (*Student W* at p. 1497.)

14. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371.) Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit. However, the parents' unilateral placement is not required to meet all requirements of the IDEA. (*Florence County School District Four v. Carter* (1993) 510 U.S. 7, 13-14.)

LEGAL CONCLUSIONS

ISSUE 1: DID DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION FOR THE 2002- 2003 SCHOOL YEAR, INCLUDING THE 2003 EXTENDED SCHOOL YEAR?

A. Substantive Appropriateness

1. Pursuant to Factual Findings 12, 13, and 18, Student was identified with an auditory processing deficit with a severe discrepancy between his ability and achievement in written language due to his deficit in auditory memory. In addition, Student had deficits in reading, he required more time to complete his work, and he had difficulty with spelling.

2. Pursuant to Factual Findings 16, 17, and 21, for the 9th Grade District placed Student in the general education classroom, with certain accommodations, and in the RSP L/STRAT class outside the general education classroom for between 10% and 13% of the school day.

3. Goals, present levels of performance and measurable benchmarks are essential components in the design of a student's program, giving teachers a roadmap for how to address the student's needs and how to measure progress. Pursuant to Factual Findings 14 and 19, the single goal in each of Student's IEPs for the 2002-2003 school year was intended to address Student's need in the area of written language only.

4. Pursuant to Factual Findings 11, 13, 14, 19, and 20, there were no goals to address the other areas of need identified for Student during the 9th Grade, including Student's needs in auditory processing, reading, and spelling. As a consequence, the IEPs for the 9th Grade failed to address Student's needs in these areas. Pursuant to Factual Findings 17 and 21, District's 9th Grade L/STRAT class provided only homework support and study skills. While these supports would provide some assistance to Student with his general education classes, the services in the L/STRAT RSP program provided by District were not reasonably calculated to provide educational benefit to Student for his needs in auditory processing, reading, and spelling. In light of the failure of the IEP to provide an educational benefit to Student in these areas of need, District failed to provide a FAPE to Student for the 2002-2003 school year.

5. For Student's claim for extended school year (ESY) services, Student urged his lack of progress, or at best *de minimis* progress, in his educational program as a basis for ESY services from District. However, such services require regression with a limited ability to recover, and not simply a lack of progress. Student did not provide evidence of likely regression or limited recoupment capacity for ESY services for 2003.

6. Considering Factual Findings 4-8, 10-14, and 17-21, the evidence established District substantively denied Student a FAPE for the 2002-2003 school year to the extent that

the program was not designed to meet Student's unique needs in auditory processing, reading, and spelling, and was not reasonably calculated to result in educational benefit in those areas.

B. Procedural Appropriateness

7. Student raises procedural claims concerning the lack of participation of his Parents in the formulation of an IEP as he entered the 9th Grade. This claim is based upon District's failure to notify Parents of the proposed high school placement for Student.

8. As determined in Factual Findings 12, and 16-18, District members of the IEP team did not consult with Parents regarding transition to a new high school placement until December 2002, which was several months after District placed Student in his 9th Grade classes. District had the obligation to provide written notice to Parents prior to the proposed new high school placement for Student, but did not do so. District's failure to include Parents in District's transition IEP team meeting prevented Parents from participating in the IEP process at the start of the 9th Grade.

9. District's failure to involve the Parents of Student in his initial 9th Grade placement significantly interfered with Parents right to meaningfully participate in the formulation of the IEP program upon entering high school. Hence, the failure to provide this important written notice to Parents regarding 9th Grade placement resulted in the denial of a FAPE to Student in or about August 2002.

ISSUE 2: DID DISTRICT OFFER STUDENT A FREE, APPROPRIATE PUBLIC EDUCATION FOR THE 2003- 2004 SCHOOL YEAR, INCLUDING THE 2004 EXTENDED SCHOOL YEAR?

A. Substantive Appropriateness

10. Pursuant to Factual Findings 18 and 24, Student's unique needs for the 2003- 2004 school year again included auditory processing deficits with broad written language needs due to his deficit in auditory memory, reading deficits, and difficulty in

completing his work. Pursuant to Factual Findings 21 and 26, District again placed Student in the general education classroom, with accommodations, and in the RSP 10th Grade L/STRAT class for both semesters for 13% of the school day. Student's weakness in reading was described as eye strength and tiring needs, to be remedied by audio tapes when available.

11. Pursuant to Factual Findings 18, 19, and 24, and similar to the previous year, the single goal in Student's IEP for the 2003-2004 school year was intended to address Student's need in the area of written expression only. Pursuant to Factual Findings 20 and 25, there were no goals to address Student's needs in the area of auditory processing and reading deficits. As a consequence, the IEPs for the 10th Grade failed to address Student's needs in these areas. Pursuant to Factual Finding 26, District's 10th Grade L/STRAT class provided more homework support than study skills when compared to the 9th Grade. While a class providing homework support would provide additional time at school for Student to complete the work in his general education classes, the services in the 10th Grade L/STRAT class provided by District were not reasonably calculated to provide educational benefit to Student for his needs in auditory processing and reading. In light of the failure of the IEP to provide an educational benefit to Student in these areas of need, District failed to provide a FAPE to Student for the 2003-2004 school year.

12. For Student's claim for ESY services for 2004, Student again urged his lack of progress, or the *de minimis* progress, in his educational program as a basis for ESY services from District. However, such services require regression with a limited ability to recover, and not simply a lack of progress. Student did not provide evidence of likely regression or limited recoupment capacity for ESY services for 2004.

13. In light of Factual Findings 4-8, 11-13, and 18-26, District substantively denied Student a FAPE for the 2003-2004 school year to the extent that the program was not designed to meet Student's unique needs in auditory processing and reading and was not reasonably calculated to result in educational benefit to Student in those areas.

B. Procedural Appropriateness

14. Student raised procedural claims concerning the meaningful participation of his Parents in the formulation of IEPs for the 10th Grade. Student alleged the failure to develop goals and objectives for all areas of need prevented meaningful participation in the formulation of his IEP. This substantive claim is addressed in paragraphs 11 through 13, above. Student also alleged that District's periodic progress reports, which only included a check mark to denote "Sufficient Progress to Meet Goal," prevented his Parents from meaningfully participating in the IEP process.

15. Pursuant to Factual Finding 23, District's periodic progress reports, though containing minimal information, were designed to promote regular communication between District and Student. There was no evidence that if Parents requested additional information for any progress period, such information was intentionally withheld. As a result, District's periodic progress reports did not prevent Parents from meaningfully participating in the IEP process and did not result in the denial of a FAPE for the 2003-2004 school year.

ISSUE 3: DID DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION FOR THE 2004- 2005 SCHOOL YEAR, INCLUDING THE 2005 EXTENDED SCHOOL YEAR?

A. Substantive Appropriateness

16. Pursuant to Factual Findings 27-30, District's triennial evaluation of Student in December, 2004, identified several unique needs. As noted by District's psychologist, Student had auditory processing weaknesses and academic difficulties in broad written language skills.

17. Pursuant to Factual Findings 33-35, in December, 2004, District offered to place Student in the general education classroom with RSP services in the L/STRAT Link class for 13% of the school day. Again, District proposed accommodations in the general education classroom to include extended time on tests and quizzes, tests to be taken with

Student's case manager in the RSP classroom, and a one-week extension of time for writing assignments.

18. Pursuant to Factual Finding 32, the single goal proposed by District for the 2004-2005 school year was intended to address Student's need in the area of written expression only. However, the goal addressed only the elements of discourse for various types of writing and did not address the broad written language deficits of Student. There were no goals to address Student's needs in the area of auditory processing and Student's weakness in reading was not identified in this proposed IEP.

19. Pursuant to Factual Findings 33-36, the L/STRAT Link class placement, if reasonably similar to what was described to parents, might have met Student's unique needs, and might have provided him with meaningful educational benefit, to constitute a FAPE. However, the L/STRAT Link class as implemented in the 2004-2005 school year, was not the program as described and promised to Student and parents. The actual services did not comport with the representations of District during negotiations for, and as written into, Student's IEP.

20. For ESY services, Student again urged lack of progress in his educational program as a basis for ESY services. However, Student did not provide evidence of likely regression or limited recoupment capacity for ESY services for 2005.

21. In light of Factual Findings 27-30 and 32-36, District substantively denied Student a FAPE for the 2004-2005 school year to the extent the program was not designed to meet Student's unique needs in auditory processing and broad written language, and was not reasonably calculated to result in educational benefit to Student in those areas.

B. Procedural Appropriateness

22. Student raises the procedural claim that all required members of the entire IEP team were not present at meetings attended by Parents in December 2004 and January 2005 during which Student's IEP was discussed. However, pursuant to Factual Finding 30, all

required members of the IEP team were present at the December 2, 2004, meeting which was scheduled for annual and triennial review.

23. Pursuant to Factual Finding 34, meetings that took place later in December, 2004, and in January 2005, with less than the whole IEP team present, were intended to give Parents additional information about the L/STRAT Link class in the program being offered by District. Parents were not denied the opportunity to participate in the formulation of an IEP for Student because of these interim meetings for additional program information.

ISSUE 4: DID DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION FOR THE 2005- 2006 SCHOOL YEAR?

A. Substantive Appropriateness

24. Pursuant to Factual Findings 27-30, Student's auditory processing weaknesses and academic difficulties in broad written language skills were identified by District's recent triennial evaluation and the Duplan Report. Pursuant to Factual Findings 37-43, by the June 21, 2005, IEP meeting, the IEP team was presented with Student's speech-language needs identified by the King Report and Student's auditory processing deficits identified by the Atkins II Report.

25. Pursuant to Factual Finding 46, District's written offer of an educational program for Student was a more comprehensive attempt at meeting Student's needs than any of the previous school years. However, the proposal failed to address Student's auditory processing deficits.

26. The testimony of Atkins was credible that Student needed auditory processing therapy in a variety of areas including auditory closure, auditory integration, and temporal resolution skills. Pursuant to Factual Finding 40 Atkins has had extensive experience in the field of audiology including almost 20 years combined experience as a senior staff clinical audiologist at Children's Hospital and an associate professor of audiology for the California State University. Her testimony in the area of audiology due to her

extensive and superior education, training, and learning is entitled to great weight. The measurable goals and objectives proposed in the Atkins II Report were designed to meet Student's unique needs.

27. As provided in Factual Findings 47 and 48, District took the position that Student's central auditory processing deficit was a "possible" area of disability the District first learned about when the Atkins II Report was presented for the June 21, 2005, IEP meeting. In refusing to provide the auditory processing therapy requested by Parents, District referred to numerous documents in its own file, including the District's Gapasin Report and Duplan Report, the independent King Report and Atkins II Report, and numerous IEPs. As provided in Factual Finding 48, a review of these reports and IEPs, however, shows that as far back as 2001, each of these documents specifically referred to Student's auditory processing deficits.

28. Thus, District substantively denied Student a FAPE for the 2005-2006 school year to the extent District failed to address Student's needs in the area of auditory processing. This conclusion is based on Factual Findings 11, 13, 18, 24, 27-30, and 38-42.

B. Procedural Appropriateness

29 Student raises the procedural claim that District's June 28, 2005, written offer of placement and services did not meet the requirements of a written offer as required by *Union School District v. Smith* (9th Cir. 1994) 15 F. 3d. 1519 (*Union*).

30. As discussed above, written notice of a change in placement should create a clear record of when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. (*Union, supra*, 15 F. 3d at 1526.) Pursuant to Factual Finding 46, District's written offer of placement and services for the 2005-2006 school year met these requirements.

31 As a result, District's written offer of its proposed IEP for Student for the 2005-2006 school year did not result in a procedural denial of a FAPE for the 2005-2006 school year.

ISSUE 5: IS STUDENT ENTITLED TO COMPENSATORY EDUCATION IN THE FORM OF EDUCATIONAL SERVICES DUE TO DISTRICT'S FAILURE TO OFFER OR PROVIDE STUDENT WITH A FREE APPROPRIATE PUBLIC EDUCATION?

32. In this case, denials of FAPE occurred during several years of Student's high school. Student seeks compensatory education in the areas of speech and language therapy, reading and written language, and auditory processing.

33. Pursuant to Factual Findings 49 and 50, Student has received speech-language therapy from Ms. King and reading instruction from Dr. Thrope during the past year. The testimony of Dr. Thrope, Ms. King, Student's Mother, and Student himself established that Student has received educational benefit from these services. Such successful remediation reduces the amount of compensatory education to which Student is entitled.

SPEECH AND LANGUAGE THERAPY

34. Pursuant to Factual Findings 37, 38, and 39, the analysis of Student's needs and resulting recommendations in the King Report, as approved by Hein, were credible and convincing. Student's needs included speech-language therapy for his expressive, receptive, and pragmatic language needs. District failed to provide such therapy. Student's speech and language specialists recommended extensive therapy to remediate his expressive, receptive, and pragmatic language deficits to include a minimum of two hours per week for at least a year, with the possibility he might need such therapy for up to two years. However, Student had already received some 20 therapy sessions with Ms. King through the time of the hearing.

35. Student is therefore entitled to reimbursement for the therapy sessions already provided by Ms. King, for the period from July 1, 2005, to the close of the record in this hearing. Student is also entitled to an additional 64 hours of speech-language therapy, at two hours per week for a total of 32 weeks, to be provided by a qualified speech-

language therapist. The determination of an additional 32 weeks of therapy is based on the equivalent of approximately two 16-week semesters of class work in the future.

READING AND WRITTEN LANGUAGE THERAPY

36. Dr. Thrope's testimony was credible and convincing that Student needs an intensive intervention to remediate his reading and writing deficits. Pursuant to Factual Findings 44, 45, and 50, a program of six hours per week, administered one and one-half hours per day, is appropriate. However, Dr. Thrope's recommendation for a full two years of remediation was made a year ago.

37. With the successful remediation Student has already received, reimbursement for the services Student has received from Dr. Thrope through the close of the record in this hearing along with the equivalent of two school semesters of intensive intervention will compensate Student for the education missed to date. As a result, Student is entitled to 192 hours of 1:1 reading instruction, at six hours per week for a period of 32 weeks, by a qualified reading specialist who has a minimum of a Masters degree with at least three years clinical experience. The determination of an additional 32 weeks of therapy is based on the equivalent of approximately two 16-week semesters of class work in the future.

AUDITORY PROCESSING THERAPY

38. The prediction in the Atkins I Report that Student's auditory processing difficulties would lead to later difficulty in reading and writing skills, among other things, proved accurate. Student's needs, arising from his difficulties that developed in language, reading and writing, are addressed above with speech-language and reading and written language therapy. Pursuant to Factual Findings 40-42, the Atkins II Report provided additional extensive recommendations for Student's current and continuing auditory processing needs which have not been met by District.

39. As provided in Factual Finding 42, Student's needs should be met by the three pronged approach of therapy, sound signal management, and self-help strategies. Sound signal management and self-help can be achieved without the services of an audiologist. However, auditory processing therapy with an audiologist should also be provided to meet Student's needs. Student is therefore entitled to auditory processing therapy for 16 sessions, at 50 minutes per session, by a qualified audiologist.

ISSUE 6: ARE STUDENT'S PARENTS ENTITLED TO REIMBURSEMENT FOR INDEPENDENT EDUCATIONAL EVALUATIONS IN THE AREAS OF SPEECH-LANGUAGE AND AUDIOLOGY AND THE RELATED EXPENSES OF PARTICIPATION IN A MEETING TO DISCUSS THE INDIVIDUALIZED EDUCATION PROGRAM FOR STUDENT?

40. Parents seek reimbursement in the amount of \$1,978.50 from District for the cost of the independent educational evaluations (IEEs) of Student prepared by King (\$1,250.00) and Atkins (\$728.50). Parents also seek reimbursement in the amount of \$850.00 for the cost of having Dr. Thrope (\$450.00), Ms. Hein (\$200.00), and Ms. King (\$200.00) present at the June 21, 2005, IEP meeting to help explain the needs of Student.

41. Parents disagreed with the conclusions of the triennial evaluation performed by District and discussed at the December 2, 2004, IEP team meeting and later meetings. Parents engaged independent professionals to assess Student's needs since they believed his educational needs were greater than what District was proposing. The IEEs prepared by King and Atkins were significant in identifying the needs, and ways to remediate the deficits, of Student. These conclusions are supported by Factual Findings 36-40. As a result, Parents are entitled to reimbursement in the amount of \$1,978.50 from District for the IEEs of King and Atkins.

42. One question was whether the additional costs of having professional evaluators present at the IEP team meeting on June 21, 2005, constituted payment for advocating for a particular position. However, the only testimony regarding the information

brought to the meeting by the independent evaluators was objective and related to explanation of findings. In short, it was an extension of the evaluators' written reports. In view of the short time allocated for the meeting, it was essential for such professionals to concisely describe their objective findings and reimbursement is appropriate. As a result, Parents are also entitled to reimbursement in the amount of \$1,150.00 from District for the additional costs to have Dr. Thrope, Ms. Hein, and Ms. King present at the IEP team meeting on June 21, 2005.

ORDER

1. District shall provide 64 hours of speech-language therapy for Student, at two hours per week for a period of 32 weeks, by a qualified speech-language therapist.
2. District shall provide 192 hours of 1:1 reading instruction for Student, at six hours per week for a period of 32 weeks to be provided by a qualified reading specialist who has a minimum of a Masters degree with at least three years clinical experience.
3. District shall provide auditory processing therapy for Student for 16 sessions, at 50 minutes per session, by a qualified audiologist.
4. District shall pay reimbursement to Parents for the costs of reading instruction provided by Dr. Thrope to Student from July 1, 2005, to March 8, 2006. District shall pay Parents within 30 days of receipt of invoices for this instruction.
5. District shall pay reimbursement to Parents for the costs of speech-language therapy provided by Ms. King to Student from July 1, 2005, to March 8, 2006. District shall pay Parents within 30 days of receipt of invoices for this therapy.
6. District shall pay reimbursement to Parents for the costs of the independent educational evaluations of Student prepared by Ms. King in the amount of \$1,250.00 and Ms. Atkins in the amount of \$728.50 for a total of \$1,978.50.
7. District shall pay reimbursement to Parents for the costs of the attendance at the IEP team meeting on June 21, 2005, of Ms. King in the amount of \$200.00, Ms. Hein in the amount of \$200.00, and Dr. Thrope in the amount of \$450.00, for a total of \$850.00.

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. The following findings are made in accordance with this statute:

Issue 1: Student prevailed on this issue.

Issue 2: Student prevailed on this issue as to substantive denial of a FAPE. District prevailed on this issue as to no procedural denial of a FAPE.

Issue 3: Student prevailed on this issue as to substantive denial of a FAPE. District prevailed on this issue as to no procedural denial of a FAPE.

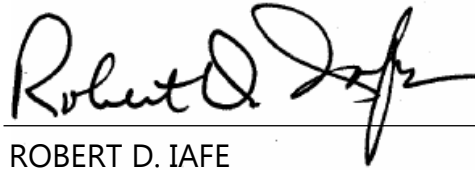
Issue 4: Student prevailed on this issue as to substantive denial of a FAPE. District prevailed on this issue as to no procedural denial of a FAPE.

Issue 5: Student prevailed on this issue. Issue 6: Student prevailed on this issue.

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 ninety days of receipt of this decision. (Cal. Ed. Code § 56505, subd. (k).)

Dated: July 14, 2006

A handwritten signature in black ink, appearing to read "Robert D. IAFE", written over a horizontal line.

ROBERT D. IAFE

Administrative Law Judge

Office of Administrative Hearings

Special Education Division