

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

In the Matters of:

STUDENT,

Petitioner,

OAH NO. N 2005070669

vs.

GLENDALE UNIFIED SCHOOL  
DISTRICT,

Respondent.

OAH NO. N 2005070667

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GLENDALE UNIFIED SCHOOL  
DISTRICT,

Petitioner,

vs.

STUDENT,

Respondent.

DECISION

Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Glendale, California, on May 9-12 and 23, 2006.

Student was represented by his Mother. <sup>1</sup>Student was not present during the hearing. Susan Han, Lanterman Regional Center Service Coordinator, was present during the hearing and assisted Mother. Jaehun Kim was present on May 23, 2006, and assisted Mother. A Korean interpreter was present during the entire hearing to translate the hearing for Mother.

Rachel Carmen Disario, Attorney at Law, represented the Glendale Unified School District (District). Also present was Lou Stewart, District's Director of Special Education.

The record remained open to receive written briefs. OAH received Student's written brief on June 13, 2006, and received no brief from the District. The record closed on June 13, 2006.

## ISSUES

1. Whether the District failed to provide Student with a free, appropriate, public education (FAPE) from May 25, 2002, through the present, by not providing or offering Student adequate academic instruction to meet Student's needs;
2. Whether the District failed to provide Student with appropriate speech and language services from May 25, 2002, through the present, so as to deny Student FAPE;
3. Whether the District failed to provide Student with appropriate occupational therapy services from May 25, 2002, through the present, and terminated occupational therapy services without appropriate prior written notice, so as to deny Student FAPE;
4. Whether Student is entitled to reimbursement from the District for the Independent Educational Evaluations (IEE) completed by Kate Mack, Ph.D. and Brenda Deadwyler in March, 2005;

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<sup>1</sup> Student is 18 years old and his Mother has conservatorship over educational decisions involving Student.

5. Whether Student is entitled to reimbursement from the District for the services provided by Lindamood-Bell to address Student's needs; and

6. Whether the District offered Student FAPE in the least restrictive environment, through the Individualized Education Programs (IEPs) developed on October 1, 2004 and October 20, 2004, and April 19, 2005 and May 25, 2005.

## FACTUAL FINDINGS

### PRELIMINARY FINDINGS

1. Student, born October 2, 1987, lives with his parents within the District. Student entered the District in January 1999. Student qualifies for special education under the primary classification of mental retardation, with a secondary eligibility category of speech and language impairment.

### STUDENT'S ACADEMIC NEEDS

2. On June 4, 2002 and June 27, 2002, the District convened IEP meetings to plan for Student's transition from middle school to high school for the 2002-2003 school year. The IEP team concluded that Student would attend a special day class at Crescenta Valley High School (CVHS). The special day class at CVHS focused on student academics and the IEP goals and objectives centered on improving Student's vocabulary, mathematics, and reading skills. Mother consented to the District's offer in the IEP.

3. The IEP team met on January 23, 2003 for Student's triennial IEP. For this IEP meeting, the District's special education assessment found that Student was functioning at the moderate mentally retarded range of cognitive ability. The assessment, which included the Wechsler Intelligence Scale for Children, Third Edition, found that Student had a full scale Intelligence Quotient (IQ) of 40, and a verbal and performance IQ of 46. Student's scores in all areas on the Woodcock-Johnson Tests of Achievement were less than one percentile. The assessment recommended that Student be transitioned into a vocational community based program to best meet Student's unique needs.

4. At the IEP meetings on January 23, 2003 and March 14, 2003, the IEP team discussed whether Student should remain in his current special day class, or attend the community based program at CVHS. The District's community based program, which teaches students independent living and vocational skills in and out of the classroom, incorporates various designated instructional services into the community based program. Speech and language services are provided to help students with everyday communication needs; e.g. how to ask for items or respond to job interview questions. Students learn functional mathematics, such as addition and subtraction, by purchasing items and establishing a budget. The program teaches functional reading by using the newspaper or items at a grocery store. Students learn safety issues, such as knowing the meaning of street signs. Additionally, students are in the community daily and work at jobs, such as landscaping.

5. Mother agreed to Student's placement in the community based program, if the District provided Student with additional academic material than what Student would normally receive in this program. The District agreed to Mother's request and the IEP team arranged to meet in a month to review academic goals and objectives for Student and to develop an Individual Transition Plan.<sup>2</sup> Soon after the completion of the March 14, 2003 IEP meeting, Student began to attend the community based program class of Jack Wade and Martin Smith.

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<sup>2</sup> Transitional services are a coordinated set of services designed to promote movement from school to post-school activities, including post-secondary education, independent living and vocational training. The transitional services are to be based on the student's needs, taking into account the student's preferences and interest, and include instruction, related services, development of employment, and when appropriate, acquisition of daily living skills and functional vocational evaluation. (Ed. Code § 56345.1.)

6. The IEP team reconvened on April 4, 2003, and the District agreed to instruct Student with the academic materials Mother provided. The District informed Mother that upon Student's graduation from CVHS, Student will be eligible to enter a community based program at a junior college, which is designed to teach students work, social ,and community skills. Mother consented to Student's participation in the community based program. While Student went into the community and successfully participated in off-campus landscaping, Student's participation in the program was limited due to the increased academics Mother requested.

7. At the October 1 and October 20, 2004 IEP meetings, Mother withdrew her consent for Student to go into the community with the rest of the class as she wanted more focus on academics. Thus, while the remainder of the class was in the community, Mr. Wade or class aides provided Student with academic instruction, using class material and academic materials provided by Mother. Mr. Wade stated that materials provided by Mother were at the first grade level, which were appropriate for Student's academic ability in reading, spelling, vocabulary and mathematics. Under Mr. Wade's instruction, Student made sufficient academic progress. Mr. Wade attempted to replicate in the classroom the independent living skills other students obtained in the community. Even though Student did not participate in community outings after Mother withdrew her consent, Mr. Wade worked with Student on improving his social skills to allow Student to initiate communication with others.

8. On April 19 and May 25, 2005, the IEP team met to discuss the District's psychoeducational and speech and language assessments, and IEEs in the same areas, obtained by the Mother. Kate Mack, Ph.D. prepared the psychoeducational IEE, and Brenda Deadwyler, a licensed speech and language pathologist, the speech and language IEE. Mother again raised her concern that Student's education should be more focused on academics. Mother also stated, without any supporting evidence, that she felt that the District's aides who work with Student were not qualified to teach Student any academic material. At the May 25,

2005 IEP meeting, Mr. Wade presented Student's present level of performance, which accurately reflected Student's performance levels and Student's educational progress.<sup>3</sup>

9. Dr. Mack's findings support the District's position that Student's educational needs are best met in the District's community based program. Dr. Mack found that Student's intellectual function was approximate to that of a six year old, and Student's academic scores in reading, writing ,and mathematics were in the six to seven-year old level. Dr. Mack recommended for Student an educational program that focuses on teaching functional academic, communication, and community based adaptive skills, transitioning to a structured vocational training placement program after high school. The District's community based program comported with Dr. Mack's recommendation and provided Student with an adequate academic program. The District properly tailored its program to address Student's needs and to teach Student functional skills in real world settings; not in the classroom as Mother preferred. Mother's request for Student to have an academically based educational program would not permit Student to adequately learn in the classroom the independent living skills Student will need in the future.

#### STUDENT'S SPEECH AND LANGUAGE SERVICES

10. Adele Wolff, a District speech and language pathologist, has worked with Student since his enrollment in the District, and is extremely aware of Student's needs and performance levels. At the June 4 and 27, 2002 IEP meetings, Ms. Wolff stated that Student's needs focused on his receptive and expressive language skills. Student could speak in three word utterances, had trouble relating events and describing activities, and his receptive and expressive skills continued to be weak. Ms. Wolff recommended that

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<sup>3</sup> Student objected to Mr. Wade conducting the Brigance Inventory of Basic Skills between the IEP meetings as Student contends that Mr. Wade conducted an unauthorized assessment. However, Mr. Wade's administration of the Brigance Inventory was authorized by the District's assessment plan.

Student receive three weekly, thirty-minute group sessions based on Student's need to be able to communicate with others. This is best taught in a group session so that Student can interact with others, however, Mother requested, and the District agreed, that Student would receive one thirty-minute individual session and two thirty-minute group sessions. Based on Student's needs and then present levels of performance, the District program as offered and implemented, allowed Student to make sufficient educational progress.

11. Ms. Wolff presented her assessment at the January 23, 2003 triennial IEP meeting. Ms. Wolff stated that Student's receptive and expressive skills were at the range of a four or five-year old, and that due to poor tongue mobility Student's articulation skills were fair. When the IEP team reconvened on March 14, 2003, Ms. Wolff presented Student's present levels of performance, and proposed goals and objectives for Student in the community based program. In the community based program, Ms. Wolff provides students with speech and language services in the classroom and during the community outings. Ms. Wolff accompanies students and assists them as a group and individually in speech modeling, communicating clearly with others, and conversational skills. Ms. Wolff properly created Student's goals and objectives based upon Student's cognitive ability and needs identified in her assessment and her experience with Student. Ms. Wolff appropriately recommended that Student's speech and language service focus on functional communication skills. Student could then express his wants and needs in an understandable manner and clarify his requests if asked.

12. At the March 14, 2003 IEP meeting, the District agreed to Mother's request to modify Student's goals and objectives to reflect that Mother observed Student using longer sentences and asking more questions than Ms. Wolff observed at school. The IEP provided Student with speech and language services two times per week for thirty-minute sessions in a group setting, which normally includes four students, and a weekly thirty-minute individual session.

13. At the January 23, 2004 IEP meeting, Ms. Wolff presented Student's present levels of performance, which reflected that Student made adequate progress with the speech and language services. The IEP had Ms. Wolff continue to provide Student with speech and language services two times per week for thirty minute sessions in a group setting, and a weekly thirty-minute individual session. Ms. Wolff also documented that Student recently had his tongue clipped,<sup>4</sup> and prescribed exercises to strengthen Student's tongue mobility. The goals and objectives developed by Ms. Wolff, which were designed to meet Student's needs and allow sufficient educational progress, were agreed to by Mother.

14. When the IEP team met on October 1 and 20, 2004, Ms. Wolff presented Student's present levels of performance, which showed that Student was making sufficient progress in meeting his speech and language goals and objectives. Ms. Wolff determined that Student's receptive and expressive language skills, while delayed, were commensurate with Student's cognitive ability level. The goals and objectives that Ms. Wolff prepared for this IEP were designed for Student's full participation in the community based program. The goals and objectives were calculated to work on Student's communication skills when conversing with others in the community and on work sites, especially articulation skills so others could understand Student. The District proposed a weekly speech and language services for a thirty-minute session in a group setting. The District's offer was adequate to meet Student's needs since Ms. Wolff would provide assistance in the community once a week when she accompanied the class off-campus. Since the community based program is a language based program, Student's teachers and aides also work with Student on his communication skills during class. Although Mother did not consent to the District's offer for speech and language services, Ms. Wolff has continued through the present to provide

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<sup>4</sup> This procedure involves clipping the tissue that attaches the tongue to the bottom of the mouth. Persons who require this procedure often have difficulty pronouncing certain sounds due to an inability to move the tongue.

Student with the speech and language services, goals and objectives identified in the last agreed upon IEP.

15. As noted in factual finding 8, the IEP team met on April 19 and May 25, 2005, to discuss the District's assessment and IEEs obtained by Mother. In conducting her assessment, Ms. Deadwyler relied solely on information presented by Mother. She did not review any prior District assessment, any IEPs, school records, or observe Student in class. Information provided by Mother was not accurate that Student had apraxia of speech.

16. Ms. Deadwyler's finding that Student had expressive and receptive language deficits were consistent with Ms. Wolff's findings that Student's language skills were in the four to five-year old range. Ms. Deadwyler disagreed with Ms. Wolff's finding that Student was not eligible for special education services under the designation of speech and language due to Student's expressive and receptive language deficits. However, Ms. Deadwyler did not analyze Student's eligibility pursuant to federal and State law. Ms. Wolff determined that Student was not eligible since Student did not score below 1.5 standard deviations, or below the seventh percentile, based on Student's developmental level, which is approximately six-years old, according to Dr. Mack's assessment.<sup>5</sup>

17. Ms. Wolff found, and Ms. Deadwyler disagreed, that Student has an articulation disorder. Ms. Wolff found that Student's inability to speak clearly significantly interferes with his ability to communicate with others. Ms. Wolff based her finding on interactions and observations of Student since 1999. Ms. Deadwyler's reached her finding that

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<sup>5</sup> Ms. Wolff's original report stated that Student's primary language was Korean. At the April 19, 2005 IEP meeting, Ms. Wolff was informed that the District had changed Student's designation to Fluent English Proficient in January 2005. Ms. Wolff revised her report for the May 25, 2005 IEP meeting. The change in language designation did not impact the validity of Ms. Wolff's assessment, especially as no person indicated that Student had difficulty conversing or being instructed in English while at CVHS.

Student does not have an articulation disorder after spending a total of three hours with Student in a one to one setting. As between the two, Ms. Wolff's opinion was more persuasive on this point.

18. Based on Ms. Wolff's finding that Student has an articulation disorder, not a receptive or expressive language disorder, the District offered on May 25, 2005, Student two weekly thirty-minute individual sessions, both in the classroom and in the community. The goals and objectives are designed to work on Student's articulation deficits and improve his social communication skills. The frequency of service and the goals and objectives are sufficient to meet Student's speech and language needs.

#### OCCUPATIONAL THERAPY SERVICES

19. At the June 4, 2002 and June 27, 2002 IEP meetings, the District recommended terminating Student's occupational therapy based on recommendations from Student's occupational service providers. Mother refused to consent to the termination of occupational therapy services. Based on Mother's refusal to terminate Student's occupational therapy services, the District agreed to provide Student with occupational therapy services three times per month for 50-minute sessions at CVHS.

20. In the January 23 and March 14, 2003 IEP meetings, the IEP members discussed the District's continuing recommendation to discontinue Student's occupational therapy sessions as Student met all the occupational therapy objectives. However, the District's offer of services states that the District's will provide Student occupational therapy services for three times per month for 50-minute sessions on the school site. This is the same level of occupational therapy that the District provided Student in the previous year IEP. The notes from the January 23 and March 14, 2003 IEP meetings do not reflect that Mother agreed to terminate Student's occupational therapy sessions. The District knew that Mother previously objected to the District terminating Student's occupational therapy services by invoking stay put. The District failed to obtain Mother's formal approval to terminating

occupational therapy services. While the IEP stated that the District would provide Student with occupational therapy services, the District did not do so during the next year.

21. At the January 23, 2004 and subsequent IEP meetings, the District did not offer Student any occupational therapy services. At the January 23, 2004 IEP meeting Mother did not ask why the District was no longer offering Student any occupational therapy related services. The January 23, 2004 IEP reflects that Mother consented to the District's offer. Mother did not establish Student's occupational therapy needs or why the District needed to continue to provide Student with occupational therapy designated services in the January 23, 2004 or subsequent IEPs.

#### LINDAMOOD-BELL SERVICES

22. At the June 4 and 27, 2002 IEP meetings, Mother presented an evaluation conducted by the Lindamood-Bell reading program, and requested that the District pay for Lindamood-Bell services for Student. The District informed Mother that it did not believe that the Lindamood-Bell reading program was the appropriate methodology to assist Student, and that Student was making adequate progress in his current reading program at school. The District did not offer to provide Lindamood-Bell services in the IEP, and Mother consented to the IEP without the Lindamood-Bell reading program.

23. At the October 1, 2004 IEP meeting, Mother presented a July 27, 2004 Lindamood-Bell learning potential evaluation. The Lindamood-Bell evaluation found Student's reading and spelling performance were consistently below the first percentile, and recommended 300 hours of Lindamood-Bell sensory-cognitive training, four hours per day. The IEP team did not complete Student's IEP, and reconvened on October 20, 2004, to finalize the IEP. The District did not agree to Mother's request for Lindamood-Bell instruction.

24. After the IEP meeting concluded, Mother made a written request for the Lindamood-Bell instruction. Mr. Wade received Mother's request on October 26, 2004, and

forwarded the request to the District's special education office. The District responded on November 15, 2004, denying Mother's request for Lindamood-Bell instruction.

25. Mother removed Student from CVHS on June 8, 2005. Student did not return until October 7, 2005. During this time, Student received approximately 300 hours of one-on-one Lindamood-Bell instruction. The Lindamood-Bell testing reports and recommendations indicate that Student made only de minimis progress. Kelly Alston, Lindamood-Bell clinic director, did not establish that the various reading programs Student received from Lindamood-Bell have been proven effective for mentally retarded persons like Student. Jenny McCann, a District teacher specialist, with extensive training and experience in the Lindamood-Bell reading program, established that Student did not have the cognitive ability to access this program.

#### REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

26. On January 6, 2005, Mother made a request to the District for a psychoeducational IEE to be conducted by Dr. Mack. The same day, the District responded with an assessment plan. The District also informed Mother of the District's right to first assess Student, and then for Mother to request an IEE if Mother disagreed with a District assessment. Mother did not request a speech and language IEE in her January 6, 2005 request letter.

27. Mother did not agree to the District's assessment plan and requested an IEP meeting. The IEP team met on February 23, 2005, to discuss the assessment plan. The District gave Mother another assessment plan, which Mother initially refused to sign. In this assessment plan, which included a psychoeducational and speech and language assessment, the District agreed not to duplicate tests that Dr. Mack would conduct. Mother eventually signed the assessment plan on March 4, 2005, and the District received it on March 7, 2005. Student did not prove the District forged Mother's signature on the assessment plan, nor on the February 23, 2005 IEP.

28. Dr. Mack conducted her psychoeducational assessment on Student on February 8, 9 and 10, 2005. The District conducted its psychoeducational assessment on

March 23 and 24, 2005, and April 4, 2005. On March 6 and 20, 2005, Ms. Deadwyler conducted her speech and language IEE, and issued her report on April 7, 2005. Ms. Wolff conducted her assessment on March 7 and 9, 2005, and issued her initial report on March 11, 2005. Petitioner provided these IEEs to the District on April 13, 2005. Mother did not explain why she obtained these IEEs before the District's assessments were completed and the results reviewed.

#### TRANSLATION OF IEP DOCUMENTS

29. The District did not provide Mother with translated copies of the January 23 and March 14, 2003, and the April 19 and May 25, 2005 IEPs, which Mother requested. At all IEP meetings at issue in this proceeding, the District provided Mother a Korean interpreter. Mother did not indicate how the District's failure to provide her with translated copies of the IEPs impacted on her ability to participate in the IEP process as the District translated the contents of the IEP document orally during the meetings. At the April 19 and May 25, 2005 IEP meetings, Mother's then attorney, Tania Whiteleather, was present and assisted Mother during the process.

#### LEGAL CONCLUSIONS

##### APPLICABLE LAW

1. The District has the burden of proof as to the issues designated in Issue 6, of this Decision and Student has the burden of proof as to the issues designated in Issues 1 through 5, of this Decision. (*Schaffer v. Weast* (2005) 546 U.S.\_\_\_\_ [163 L.Ed.2d 387].)

2. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA) and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs

and to prepare them for employment and independent living. (Ed. Code § 56000.<sup>6</sup>) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1401(8) (IDEA 1997); 20 U.S.C. § 1402(9) (IDEIA 2004).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(25) (IDEA 1997); 20 U.S.C. § 1402(29) (IDEIA 2004).)

3. Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code § 56031.) The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(22) (IDEA 1997); 20 U.S.C. § 1402(26) (IDEIA 2004).) In California, related services may be referred to as designated instruction and services. (Ed. Code § 56363, subd. (a).)

4. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.Ct. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at 198-200.) The Court stated that school districts are required to provide only a "basic floor of

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<sup>6</sup> All statutory citations to the Education Code are to California law, unless otherwise noted.

opportunity” that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Id.* at 201.)

5. To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of each district’s proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the district’s program was designed to address the student’s unique educational needs, was reasonably calculated to provide student some educational benefit, and comported with student’s IEP, then the district provided a FAPE, even if student’s parents preferred another program and even if his parents’ preferred program would have resulted in greater educational benefit. School districts are also required to provide each special education student with a program in the least restrictive environment; with removal from the regular education environment occurring only when the nature or severity of the student’s disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); Ed. Code § 56031.)

6. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)<sup>7</sup> It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district; not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987), 811 F.2d 1307, 1314.)

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<sup>7</sup> Although *Adams* involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Off. of Education* (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (*Pitchford v. Salem-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F. Supp. 2d 1213, 1236).

7. *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA as part of the FAPE analysis. Pursuant to 20 U.S.C. section 1415(f)(3)(E)(ii), of IDEIA, for a procedural violation to deny the student FAPE the procedural violation must either: 1) impede the student's right to FAPE; 2) significantly impede a parent's opportunity to participate in the education decision making process; or 3) cause a deprivation of educational benefits.

8. 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 request 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).)

9. 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).)

10. When a parent disagrees with an assessment obtained by the public educational agency, the parent has the right to an 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).)

#### DETERMINATION OF ISSUES

Issue 1: Whether the District failed to provide Student with a free, appropriate, public education (FAPE) from May 25, 2002 through the present, by not providing or offering Student adequate academic instruction to meet Student's needs.

- A. Pursuant to Factual Findings 4 through 9, Mother's request that the District provide Student with more academic instruction was to maximize Mother's perceived notion as to Student's ability, which the District is not required to do in developing IEPs. As established in Dr. Mack's IEE, Student has the cognitive ability of a six-year old. The Brigance Inventory results that Mr. Wade obtained were consistent with Dr. Mack's findings. Mr. Wade and his teaching assistants provided Student with academic instruction commensurate with Student's cognitive ability. The District provided Student with FAPE by creating and providing Student with an educational program that allowed Student to make sufficient educational progress in the academic subjects of reading, spelling, and mathematics.
- B. Pursuant to Factual Findings 4 through 9, the District's community based program at CVHS provided Student with FAPE. This program met Student's needs and provided Student with sufficient academics. Dr. Mack's IEE stated that Student needed a program that taught independent living skills, including vocational skills, which the District's community based program provided. This program integrated functional academics to teach Student academic skills he will need in the community, such as shopping within a budget or reading job instructions.

Issue 2: Whether the District failed to provide Student with appropriate services in speech and language from May 25, 2002 through the present, and continuing through the present, so as to deny Student FAPE.

- A. Pursuant to Factual Findings 10 through 18, the District provided Student with sufficient speech and language services to meet Student's needs and provide Student with FAPE. Ms. Wolff determined Student's present levels of performance at the IEP meetings, and drafted goals and objectives that were adequate to meet Student's needs. Ms. Wolff established, based on her assessments, observations of Student, and information provided during IEP meetings, that the frequency and nature of the speech and language services the District provided were sufficient to meet Student's needs. The District also established that Student needed to learn functional speech and language skills in a real world setting, and not the classroom setting that Mother preferred.
- B. Pursuant to Factual Findings 15 through 18, Ms. Wolff determined in her April 2005 assessment that Student required speech and language services in the area of articulation and not expressive and receptive language. Ms. Wolff applied the applicable legal standards in making her determination, which was based on the test results in her assessment and detailed knowledge of the Student due to her many years of working with Student.

Issue 3: Whether the District failed to provide Student with appropriate services in occupational therapy from May 25, 2002 through the present, and terminated occupational therapy services without appropriate prior written notice, so as to deny Student FAPE.

- A. Pursuant to Factual Finding 20, the District failed to provide Student with FAPE because the District did not provide Student with the occupational therapy services designated in the January 23, 2003 and March 14, 2003 IEP of 50 minutes per session, three times per month. The District discussed terminating Student's occupational therapy services at these IEP meetings, but still offered Student

occupational therapy services. While the District did not provide Student the offered occupational therapy services, Student did not suffer any harm as Mother agreed in the January 23, 2004 IEP that Student had met all the objectives for occupational therapy services.

- B. Pursuant to Factual Finding 21, Student did not establish Student's continuing need for occupational therapy services in subsequent IEPs, and Mother agreed to the termination of this service at the January 23, 2004 IEP meeting.

Issue 4: Whether Student is entitled to reimbursement from the District for the IEEs completed by Dr. Kate Mack and Brenda Deadwyler in March, 2005.

Pursuant to Factual Findings 26-28, Mother's request for Dr. Mack's psychoeducational assessment was not due to any disagreement Mother had with a District assessment. As to Ms. Deadwyler's speech and language assessment, Mother never requested a speech and language IEE before presenting Ms. Deadwyler's assessment to the District.

Issue 5: Whether Student is entitled to reimbursement from the District for the services provided by Lindamood-Bell to address Student's needs.

Pursuant to Factual Findings 23 and 25 and Legal Conclusion for Issue 6, the District offered Student an adequate educational program to meet Student's reading needs without the provision of Lindamood-Bell services. Also, Student did not demonstrate that the nearly 300 hours of Lindamood-Bell instruction provided Student with any tangible educational benefit. Mr. Allston and Ms. McCann established that the Lindamood-Bell reading program is not designed or effective for a student with mental retardation, like Student.

Issue 6: Whether the District offered Student FAPE in the least restrictive environment, through the IEPs developed on October 1, 2004 and October 20, 2004, and April 19, 2005 and May 25, 2005.

Pursuant to Factual Findings 7, 8, 9, 14, 15, 16, 17, 18 and 21, the District's IEPs provided Student with FAPE in the least restrictive setting as Student required an education program that combined academics and independent living skills like the District's community based program and CVHS. The District provided Student with sufficient speech and language and occupational therapy services to allow Student to make sufficient educational progress.

## ORDER

All of Student's requests for relief are denied, and the District's request for relief is granted.

## PREVAILING PARTY

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

1. Concerning Issues 1, 2, 4, 5 and 6, the District prevailed.
2. Concerning Issue 3, Student prevailed as to the District's failure to provide Student with occupational therapy services designated in the January 23, 2003 and March 14, 2003 IEP. However, Student did not prove any remedy based on the District's failure to provide the offered occupational therapy services.

## RIGHT TO APPEAL THIS DECISION

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

DATED: June 30, 2006

A handwritten signature in black ink, appearing to read "P. P. Castillo", written over a horizontal line.

PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative  
Hearings Special Education  
Division