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

In the Matter of: STUDENT, Petitioner, v. UPPER LAKE UNION HIGH SCHOOL DISTRICT, Respondent.	OAH CASE NO. N 2006050375

DECISION

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this matter on September 12, 2006, in Upper Lake, California.

Gayle Zepeda, Education Director, Robinson Rancheria Band of Pomo Indians, and Marsha M. Lee, Indian Child Welfare Act/Human Services Coordinator, Robinson Rancheria Band of Pomo Indians, represented Petitioner (Student). Student also attended.

Jeff Hassberg, Director of Special Education and School Psychologist, represented Respondent Upper Lake Union High School District (District). Don Boyd, Vice Principal, Upper Lake High School (ULHS), also attended.

Student filed the amended Complaint on July 17, 2006. The hearing was conducted and the matter was submitted on September 12, 2006.

ISSUES[1]

Did District deny Student a free and appropriate public education (FAPE) by the following:

1. Failing to provide Student with information concerning the transfer of special education rights when she turned 18 years of age?

2. Failing to provide Student and her advocates written notice of the individualized education program (IEP) team meetings on March 28, April 28, and May 8, 2006?

3. Failing to provide Student a timely assessment?

4. Failing to implement Student's positive behavior plan?

5. Failing to follow the required process when disciplining Student?

CONTENTIONS OF THE PARTIES

Student contends that District was required to have Student complete a written assignment of educational decision-making authority when she reached 18 years of age. District contends that it was not required to have Student complete a written assignment of educational decision-making authority.

Student contends that District failed to give her or her advocates written notice of IEP team meetings on March 28, April 28, and May 8, 2006. District contends that Student did not authorize District to inform her advocates of the IEP team meetings.

Student contends that District failed to provide Student a timely cognitive ability assessment and social-emotional assessment because it offered to assess her shortly before she graduated from high school. District contends that its plan to assess Student was appropriate.

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[1] The issues were re-organized for purpose of this decision.

Student contends that District failed to implement her positive behavior plan. District contends that it attempted to implement Student's positive behavior plan but Student refused the services that were offered.

Student contends that District expelled Student on January 17, 2006, without conducting a manifestation determination. District contends that it was not required to do so because it conducted one in October 2005 when Student was suspended for the same conduct. Student contends that District expelled her in January 2006 without providing her an interim alternative educational placement or any educational services. District contends that it provided educational services by mailing Student a packet of educational materials that she was to complete during her expulsion.

Student contends that she is entitled to receive unspecified compensatory education from the District. District contends that Student is not entitled to compensatory education because she graduated from high school with a regular diploma.

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. Student is eligible for special education services on the basis of a specific learning disability. She attended District's ULHS during the 2005-2006 school year and graduated with a regular diploma at the end of the school year.

TRANSFER OF SPECIAL EDUCATION RIGHTS

2. As described in Legal Conclusions paragraph 7, upon reaching 18 years of age, all rights under special education law transfer to a student who is legally competent. Student was 18 years old when she first attended a District school. Student understood that once she turned 18 years old, she was responsible for signing her IEPs and other special education documents. District neither provided Student information about how she

could assign her special education rights to someone else once she reached 18 years of age, nor was District required to do so.

NOTICES OF IEP TEAM MEETINGS TO STUDENT AND ADVOCATES

3. As discussed in Legal Conclusions paragraph 8, a student who is 18 years of age is entitled to receive notices of IEP team meetings.

4. Student has failed to show that IEP team meetings were held on March 28 or May 8, 2006. District was not required to send notices of meetings on March 28 and May 8, 2006, to Student or her advocates.

5. An IEP team meeting was held on April 28, 2006. Student did not offer any evidence about whether or not she received notice of this meeting. There is insufficient evidence that District failed to send Student timely notice of the IEP team meeting on April 28, 2006. District was not required to send a notice of that meeting to either Ms. Lee or Ms. Zepeda.

TIMELY ASSESSMENT OF STUDENT

6. As discussed in Legal Conclusions paragraph 9, a district must assess a student at least once every three years, or if a parent or teacher requests an assessment. At a meeting on May 25, 2006, District offered Student an assessment plan for a comprehensive psycho- educational assessment to be performed by School Psychologist Jeff Hassberg. It is unknown whether Student attended this meeting. Ms. Lee attended the meeting and objected to the assessment plan because she did not believe that Mr. Hassberg would perform an objective assessment. The assessment plan was never signed. Student has not shown that District failed to perform a timely triennial assessment. There is no evidence that Student, or anyone on her behalf, requested an assessment that was not performed. Student has failed to show that District failed to provide a timely assessment.

STUDENT'S DISCIPLINE HISTORY

7. Student was suspended for five days in October 2005 for smoking marijuana on school grounds. She was expelled for smoking marijuana on school grounds in January 2006. On February 22, 2006, District's governing board suspended the expulsion and placed Student on probation as long as she complied with specific conditions. Although Student could have attended ULHS after the school board's action, the District did not inform Student that she could return to school until March 28, 2006. Student was removed from her educational placement for two months after she was expelled. Student was disciplined for the third time in May 2006 after an incident with a classroom aide. The punishment for this incident is unclear.[2]

IMPLEMENTATION OF STUDENT'S BEHAVIOR PLAN

8. As discussed in Legal Conclusions paragraph 11, a district is required to develop and implement a behavior plan in connection with the imposition of discipline. On October 28, 2005, District developed a positive behavior support plan for Student in connection with her suspension for smoking marijuana at school. The antecedent behavior to the inappropriate conduct identified in the behavior plan is Student's need to alter her mood to achieve a calmer, more relaxed state. The behavior plan was designed to provide Student with alternative methods to achieve a calm, relaxed state of mind.

9. The behavior plan required that Student have a minimum of three, 20-minute sessions with the school psychologist during the 2005-2006 school year. During these sessions, Student was to practice breathing and visualization techniques to achieve a calmer, more relaxed state of mind, and discuss other methods to assist her, such as

[2] Although Student testified that she was expelled for the May incident, her testimony in this area is not persuasive because she appeared confused about the chronology of her discipline in January and May 2006.

dream manipulation and meditation. Once developed, the behavior plan is part of Student's IEP.

10. Mr. Hassberg met with Student for 15 minutes on November 16, 2005. He gave her information concerning substance abuse, and told her that they would meet again to implement the behavior plan. On December 8, 2005 and January 10, 2006, Mr. Hassberg attempted to conduct counseling sessions with Student. However, she refused to leave her classroom and go to Mr. Hassberg's offices for the sessions. Mr. Hassberg made no further attempts to implement Student's behavior plan because he believed that Student was resistant to counseling and was not going to benefit from the counseling required by the behavior plan. Student was never provided information about breathing and visualization techniques, dream manipulation or meditation, as required by her behavior plan. District took no steps to modify Student's behavior plan. The District failed to implement the counseling required by Student's October 2005 positive behavior plan.

11. The behavior plan also requires that if Student uses marijuana again, she will be instructed concerning the dangers of marijuana dependency, and an emergency IEP team meeting will be held to review her IEP and behavior plan to determine the appropriateness of the IEP and related support services. Student offered no evidence concerning whether or not District complied with these requirements of the behavior plan when she was disciplined again in January 2006 for using marijuana at school. The May 2006 incident for which Student was disciplined did not involve substance abuse; therefore, Student's behavior plan did not require any action by District. There is no evidence that District failed to implement Student's behavior plan in connection with the May 2006 incident.

MANIFESTATION DETERMINATION FOR JANUARY 2006 EXPULSION

12. As discussed in Legal Conclusions paragraphs 15 through 18, a district is required to conduct a manifestation determination when it removes a student from an

educational placement for over 10 days, subjects a student to a pattern of removals that total more than 10 days, or removes a student to an interim alternative educational setting for specific conduct involving weapons, drugs, or violent acts.

13. When Student was suspended in October 2005 for smoking marijuana on school grounds, a manifestation determination was made that the conduct was not caused by and did not have a direct and substantial relationship to Student's disability. It was also determined that Student's conduct was not the direct result of District's failure to implement her IEP.

14. District did not conduct a manifestation determination in connection with Student's expulsion in January 2006. Mr. Hassberg opined that District was not required to do so because District previously determined in October 2005 that smoking marijuana was not a manifestation of Student's disability. As described in Legal Conclusions paragraph 17, the fact that District conducted a manifestation determination in October 2005 does not fulfill its obligation to conduct one in connection with Student's expulsion in January 2006. Student offered no evidence that the failure to conduct a manifestation determination resulted in lost educational opportunity, serious infringement upon the opportunity to participate in the decision-making process, or a deprivation of educational benefits.

INTERIM ALTERNATIVE EDUCATIONAL PLACEMENT

15. As discussed in Legal Conclusions paragraphs 13 and 14, a district is obligated to provide a student with special education services whenever a student is suspended for over 10 days or is removed from his or her current educational placement due to specified conduct involving weapons, drugs, or violent acts. A district must provide services that enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals in the student's IEP. Student was

expelled for two months between January and April 2006 for one of the specified drug offenses and was entitled to receive education services.

16. On January 19, 2006, Mr. Hassberg mailed a letter and a packet of school work to Student. It included materials in math, English, history, and science that would take two weeks to be completed at a typical pace. In the letter, Mr. Hassberg informed Student that he and Student's classroom teacher were available by telephone to assist her if she needed it. District also offered Student individual, school-based counseling related to substance abuse. Student never received this letter or packet of school work.

17. During Student's removal from ULHS in January through March 2006, Ms. Lee and Ms. Zepeda actively worked to move Student into an educational placement. They had repeated contact with several employees of the Lake County Office of Education and with other schools in the area. There is no evidence that there was any contact between District and Student until Student and Ms. Lee attended a meeting on March 28, 2006. Mr. Hassberg informed Student at that meeting that she could return to school.

18. District failed to provide Student with an interim alternative educational placement and failed to provide her any educational services during the two months of her expulsion from January to March 2006. Because the District provided no educational services to Student, she was unable to continue to participate in the general education curriculum while she was expelled.

COMPENSATORY EDUCATION

19. As discussed in Legal Conclusions paragraph 20, a student who has graduated from high school may be awarded compensatory educational services to remedy a school district's failure to provide the student a FAPE while in school.

20. Student graduated from high school with 'D' grades in all subjects except art, in which she received an 'F.' In April 2005, Student's basic reading skills were

approximately at the fourth grade level. Student has difficulty comprehending written material and problems with memory retention. Student often did not use proper grammar while she testified. Student has unique needs in the areas of written language and reading.

LEGAL CONCLUSIONS

APPLICABLE LAW

REQUIREMENTS OF A FAPE

1. A child with a disability has the right to a FAPE. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 56000.) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined in pertinent part as specially-designed instruction and related services that meet the unique needs of a child with a disability and are required to assist the child to benefit from instruction. (20 U.S.C. § 1401(29); Ed. Code, § 56031.)

2. The IDEA requires a school district to provide "a basic floor of opportunity . . . [consisting] of access to specialized instruction and related services which are individually designed to provide educational benefit to the [child with a disability]." (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201.) The intent of the IDEA is to "open the door of public education" to a child with a disability; it does not "guarantee any particular level of education once inside." (*Id.* at p. 192.) A school district is not required to maximize a child's potential. (*Id.* at p. 197.)

3. The analysis focuses 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.) The district must offer a program that is reasonably calculated to provide more than a trivial or minimal level of progress. (*Amanda J. v. Clark County*

School Dist. (9th Cir. 2001) 267 F.3d 877, 890, citing *Hall v. Vance County Bd. of Education* (4th Cir. 1985) 774 F.2d 629, 636.)

4. In addition to these substantive requirements, the Supreme Court recognized the importance of adhering to the procedural requirements of the IDEA. Thus, the analysis of whether a student has been provided a FAPE is two-fold: the school district must comply with the procedural requirements of the IDEA, and the IEP must be reasonably calculated to provide the child with educational benefits. (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley*, *supra*, 458 U.S. at pp. 206-207.)

5. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist.*, *supra*, 267 F.3d at p. 892.) To constitute a denial of a FAPE, procedural violations must result in one of the following: the loss of educational opportunity; a serious infringement of the parents' opportunity to participate in the IEP process; or a deprivation of educational benefits. (*Ibid.*) A substantially similar standard was codified in the IDEIA (20 U.S.C. § 1415(f)(3)(E)(ii)) and is codified in California law (Ed. Code, § 56505, subd. (f)(2)).

BURDEN OF PROOF

6. As the petitioner, Student has the burden of proving that the District did not comply with the law. (*Schaffer v. Weast* (2005) 546 U.S. [126 S.Ct. 528, 163 L.Ed.2d 387].

TRANSFER OF EDUCATIONAL RIGHTS

7. When a student receiving special education services who is legally competent reaches 18 years of age, the local educational agency shall provide any required notice of procedural safeguards to both the student and the student's parents. (34 C.F.R. § 300.517(a); Ed. Code, § 56041.5.) All other special education rights previously accorded to the parents shall transfer to the student. (*Ibid.*)

NOTICE OF IEP TEAM MEETINGS

8. A parent or guardian shall be notified of the IEP team meeting early enough to ensure an opportunity to attend. (Ed. Code, §§ 56043, subd. (e); 56341.5, subd. (b).) A district convening an IEP team meeting shall take steps to ensure that no less than one of the parents or guardians of the student are present at each meeting or are afforded the opportunity to participate. (Ed. Code, § 56341.5, subd. (a).) A district is required to provide these rights to a student who is 18 years of age. (Ed. Code, § 56041.5.)

REQUIREMENTS OF AN EVALUATION OR ASSESSMENT

9. A school district must re-evaluate a child with a disability at least once every three years, or if a parent or teacher requests an evaluation. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.536(b); Ed. Code, § 56381, subd. (a)(2).) A school district is required to assess a child in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.532(g); Ed. Code, § 56320, subd. (f).)

10. Whenever an assessment for the development or revision of an IEP is to be conducted, the school district shall provide the parent with a written assessment plan meeting specific requirements within specific time periods. (Ed. Code, § 56321.) An IEP required as a result of an assessment shall be developed within 60 days from the date the school district received the parent's written consent for the assessment, unless the parent agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (f)(1); 56344, subd. (a).)

BEHAVIOR INTERVENTION PLAN

11. There are two situations in which federal and state law require that a child's behavior be addressed. First, when a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a) (2)(i), (b); Ed. Code, § 56341.1, subd. (b)(1).) Second, when a school district

subjects a child to certain types of discipline, it must conduct a functional behavior assessment and implement a behavior intervention plan, or review and modify the behavior intervention plan if one is already in place. (20 U.S.C. § 1415(k)(1)(D), (F); 34 C.F.R. § 300.520(b); Ed. Code, § 48915.5, subd. (a); *Alex R. v. Forrestville Valley Community Unit School Dist. #221* (7th Cir. 2004) 375 F.3d 603, 614.)

DISCIPLINE PROCESS

12. School personal may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days, to the extent that the same alternatives are applied to children without disabilities. (20 U.S.C. §1415(k)(1)(B); Ed. Code, § 48915.5, subd. (a) [a student with a disability may be suspended or expelled from school as provided by federal law].) The student's IEP team determines the interim alternative educational setting to which the student is removed. (20 U.S.C. § 1415(k)(2).)

13. A student who is removed from his or her current placement for disciplinary reasons for 10 days or less need not receive special education services if educational services are not provided to a child without a disability who is similarly disciplined. (34 C.F.R. § 300.121(d)(1).) However, a student who is removed to an interim alternative educational setting for not more than 45 school days for carrying or possessing a weapon at school, on school premises, or at a school function; knowingly possessing or using illegal drugs, or selling or soliciting the sale of a controlled substance while at school, on school premises, or at a school function; or inflicting serious bodily injury upon another while at school, on school premises, or at a school function shall receive educational services. (20 U.S.C. § 1415(k)(1)(D)(i).) A student who is removed for these offenses shall receive educational services that enable him or her to continue to participate in the general education curriculum, although in another setting, and to progress toward

meeting the goals in the student's IEP. (*Ibid.*; see 34 C.F.R. § 300.121(d).) Several factors should be considered when determining the nature of educational services to be provided, including the length of time the student is removed from his or her educational placement; the extent to which the child has been removed previously from the placement; and the child's needs and educational goals. (64 Fed.Reg. 12623 (Mar. 12, 1999).

14. A student who is either removed for over 10 days, or is subjected to a pattern of removals that total more than 10 school days in a school year is entitled to receive special education services. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. §§ 300.519(b); 300.520(a)(1)(ii).)

15. A district is required to conduct a review to determine if the conduct that is subject to discipline is a manifestation of the student's disability; this is known as a "manifestation determination." A district is required to conduct a manifestation determination whenever it removes a student from his or her current educational placement for over 10 days; subjects a student to a pattern of removals that total over 10 days; or removes a student to an interim alternative educational setting for specific conduct involving weapons, drugs, or violent acts. (20 U.S.C. § 1415(k)(1)(E).)

16. A manifestation determination must be conducted by the district, the parent, and relevant members of the IEP team. (20 U.S.C. § 1415(k)(1)(E)(i).) They must review all relevant information in the student's file, including the IEP, any observations of teachers, and any relevant information from the parents to determine if the conduct was caused by, or had a direct and substantial relationship to the child's disability, or if the conduct was the direct result of the district's failure to implement the IEP. (*Ibid.*) The manifestation determination must be done within 10 school days of a decision to change the placement of the student due to a violation of the code of student conduct. (*Ibid.*)

17. A manifestation determination is an individualized review. (64 Fed.Reg. 12666 (Mar. 12, 1999).) A manifestation determination should be conducted even when a

student engages in the same conduct that was previously determined not to be a manifestation of his or her disability, because the assessment of the relationship between the student's behavior and disability could change. (*Ibid.*)

18. If it is determined that the student's conduct was a manifestation of his or her disability, the student must be returned to his or her regular educational placement unless either the parent and district agree to a change of placement, or the student was removed for enumerated conduct involving weapons, drugs, or violent acts. (20 U.S.C. § 1415(k) (1)(F)(iii).)

DETERMINATION OF RELIEF

19. Education Code section 56026.1, subdivision (a) and 34 Code of Federal Regulations part 300.122(a)(3)(i) provide that a student who graduates from high school with a regular high school diploma is no longer eligible for special education services. Some courts have found that any claim that a FAPE was denied becomes moot upon a valid graduation. (*Russman v. The Bd. of Education of the Enlarged City School Dist. of the City of Waterliet* (2nd Cir. 2001) 260 F.3d 114, 119; *T.S. v. Independent School Dist. No. 54* (10th Cir. 2001) 265 F.3d 1090, 1092 [If a student who graduated from high school does not contest his or her graduation in a request for a due process hearing, the case is moot.].)

20. Relying upon the United States Supreme Court's broad interpretation of the relief authorized for violations of the IDEA in *School Committee of the Town of Burlington v. Dept. of Education of Massachusetts* (1985) 471 U.S. 359, 369-370), some courts have long held that there is authority to order compensatory education to an adult if it is necessary to cure a past violation. (*Bd. of Education of Oak Park & River Forest High School Dist. 200 v. Ill. State Bd. of Education* (7th Cir. 1996) 79 F.3d 654, 656; see also *Capistrano Unified School Dist. v. Wartenberg* (9th Cir. 1995) 59 F.3d 884, 890 [request for reimbursement for private school tuition is not moot after the student graduates from

high school]; *Maine School Administrative Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 18 [a child eligible for special education services may be entitled to further services in compensation for past violations even after his or her eligibility for special education services has expired]; *Pihl v. Mass. Dept. of Education* (1st Cir. 1993) 9 F.3d 184, 189, relying upon *Zobrest v. Catalina Foothills School Dist.* (1993) 509 U.S. 1, 4 fn. 3 [request for reimbursement of educational services remains a live controversy after student's graduation from high school].)[3]

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

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

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[3] An unpublished federal district court decision in California followed this view, San Dieguito Union High School Dist. v. Guray-Jacobs (S.D. Cal. 2005) 44 IDELR 189, which offers persuasive, but not precedential authority. (City of Hawthorne ex rel. Wohlner v. H&C Disposal Co. (2003) 109 Cal.App.4th 1668, 1678, fn. 5 [citation of unpublished federal district court decision is not prohibited by California Rules of Court, rule 977].)

DETERMINATION OF ISSUES

DID DISTRICT DENY STUDENT A FAPE BY FAILING TO PROVIDE HER INFORMATION CONCERNING THE TRANSFER OF SPECIAL EDUCATION RIGHTS WHEN SHE TURNED 18 YEARS OF AGE?

23. As discussed in Legal Conclusions paragraph 7, all rights under special education law transferred to Student when she turned 18 years of age. Student argued that as part of the transfer of rights to Student, District was required to inform her how she could assign her educational rights to another person. As determined in Factual Findings paragraph 2, District did not deny Student a FAPE by failing to provide her with information about how she could assign her special education rights to someone else.

DID DISTRICT DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT AND HER ADVOCATES WRITTEN NOTICE OF THE IEP TEAM MEETINGS ON MARCH 28, APRIL 28, AND MAY 8, 2006

24. As discussed in Legal Conclusions paragraph 8, District was required to provide Student notice of any IEP team meeting. As determined in Factual Findings paragraphs 4 and 5, District did not deny Student a FAPE by failing to provide Student or her advocates with notice of IEP team meetings on March 28, April 28, and May 8, 2006.

DID DISTRICT DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT A TIMELY ASSESSMENT?

25. As discussed in Legal Conclusions paragraphs 9 and 10, District was required to assess Student at least once every three years or if a teacher or Student requested an assessment. As determined in Factual Findings paragraph 6, District did not deny Student a FAPE by failing to provide Student a timely assessment.

DID DISTRICT DENY STUDENT A FAPE BY FAILING TO IMPLEMENT STUDENT'S POSITIVE BEHAVIOR PLAN?

26. As discussed in Legal Conclusions paragraphs 1 and 11, District was required to implement Student's behavior plan to provide her a FAPE. As determined in Factual Findings paragraphs 8 through 11, District denied Student a FAPE by failing to provide Student the counseling required by her behavior plan.

DID DISTRICT DENY STUDENT A FAPE BY FAILING TO FOLLOW THE REQUIRED PROCESS WHEN DISCIPLINING STUDENT?

27. As discussed in Legal Conclusions paragraphs 15 and 16 and as determined by Factual Findings paragraph 14, District failed to conduct a manifestation determination when it expelled Student in January 2006. As determined by Factual Findings paragraph 14, Student failed to show that she lost educational opportunity, was unable to meaningfully participate in the IEP process, or was deprived of educational benefits. As discussed in Legal Conclusions paragraph 5, District did not deny Student a FAPE by failing to conduct a manifestation determination concerning her expulsion in January 2006.

28. As discussed in Legal Conclusions paragraphs 12 through 14, District was required to provide educational services to Student during her expulsion from January to March 2006 to enable her to continue to participate in the general education curriculum and to progress toward meeting the goals in her IEP. As determined by Factual Findings paragraph 18, District denied Student a FAPE by failing to provide educational services to her during her expulsion.

IS STUDENT ENTITLED TO RECEIVE COMPENSATORY EDUCATION?

29. As discussed in Legal Conclusions paragraph 20, Student is entitled to receive compensatory education services for the District's denial of a FAPE. As determined in Legal Conclusions paragraphs 26 and 28, District failed to provide Student a FAPE by

failing to implement her October 2005 positive behavior plan and by failing to provide educational services during her expulsion in January to March 2006.

30. As discussed in Legal Conclusions paragraphs 21 and 22, an award of compensatory education is designed to compensate Student for the special education and related services that the District failed to provide her. As determined by Factual Findings paragraph 20, Student requires compensatory education in the areas of written language and reading. Student shall receive 24 hours of individual instruction by a credentialed teacher in written language and reading. The instruction may be provided by District staff, or the District shall arrange for the instruction to be provided by an independent vendor.

31. As determined by Factual Findings paragraph 10, District failed to provide counseling to Student as required by her behavior support plan. Student shall receive three hours of individual counseling by an appropriately-licensed mental health professional who is not a District employee. The counseling shall include methods Student can use to achieve a calmer, more relaxed state of mind.

ORDER

1. Student is entitled to 24 hours a of individual instruction by a credentialed teacher in written language and reading. The instruction shall be provided by a credentialed teacher. The instruction may be provided by District staff, or the District shall arrange for the instruction to be provided by an independent vendor.

2. Student is entitled to three hours of individual counseling by an appropriately- licensed mental health professional who is not a District employee. The counseling shall include methods Student can use to achieve a calmer, more relaxed state of mind.

3. Student's further request for relief is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. Student prevailed on issues 4 and 5. District prevailed on issues 1, 2, and 3.

RIGHT TO APPEAL THIS DECISION

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

Dated: September 26, 2006

JUDITH A. KOPEC

Administrative Law Judge

Special Education Division

Office of Administrative Hearings