

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

In the Matter of:

STUDENT,

Petitioner,

v.

TORRANCE UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2006100346

DECISION

Administrative Law Judge Richard T. Breen, Office of Administrative Hearings, Special Education Division, State of California, heard this matter in Torrance, California, June 5 through 8, and 11 through 15, 2007.

Marcy J.K. Tiffany, Attorney at Law, represented Student. Student's mother (Mother) and paralegal David Tiffany attended the hearing on all days. Student and his father attended the hearing on the afternoon of June 8, 2007. Student testified on June 11, 2007.

Sharon A. Watt, Attorney at Law, represented Torrance Unified School District (District). Aaron Benton, District Director of Special Education, attended the hearing on all days. Rudy DeLana, District Program Specialist, and Dina Parker, District Coordinator for Special Education, also briefly attended the hearing.

Student filed a Request for Due Process Hearing on October 6, 2006. The parties stipulated to a continuance on November 14, 2006. At the hearing, the parties requested, and were granted, permission to file written closing arguments. Upon receipt of written

closing arguments on July 2, 2007, the matter was submitted and the record was closed.

## ISSUES<sup>1</sup>

1. Was Student denied a free and appropriate public education (FAPE) from October 6, 2003, until he graduated in June of 2006, because the District failed to provide IEP goals and adequate services to address Student's mathematics needs.

2. Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide speech and language goals during the 2003- 2004 school year and failed to provide adequate services in all years.

3. Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide IEP goals to address Student's reading needs in the 2003-2004 and 2004-2005 school years and failed to provide adequate services in all years.<sup>2</sup>

4. Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide IEP goals to address Student's written language needs in the 2003-2004 and 2004-2005 school years and failed to provide

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<sup>1</sup> On the first day of the hearing, counsel for Student verbally withdrew the issue of whether Student was procedurally denied a FAPE because the District failed to accurately report on Student's present levels of performance in reading and written language at the March 2005 IEP team meeting. The issues in the due process complaint have been restated and in some cases, combined, for purposes of organizing this decision.

<sup>2</sup> Unlike Student's allegations as to the prior school years, Student's due process complaint did not allege that the reading and written language goals for the 2005-2006 school year constituted a denial of FAPE.

adequate services in all years.<sup>3</sup>

5. Was Student denied a FAPE from September of 2004 until he graduated in June of 2006, because the District failed to provide IEP goals and adequate services to address Student's social/emotional needs.<sup>4</sup>

6. Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide adequate transition plans.

7. Was Student denied a FAPE because the District failed to accurately report on Student's social/emotional, written language and reading needs at the March 15, 2004 individualized education plan (IEP) team meeting.

8. Was Student denied a FAPE because the District unilaterally altered Student's IEP to reduce the number of hours of Lindamood-Bell services provided to Student during the 2005 extended school year (ESY).

## REQUESTED REMEDIES

Student seeks reimbursement for private speech therapy in 2003-2004, reimbursement for tutoring between September of 2003 and May of 2006, and two years tuition at a private college as a remedy for the denial of FAPE.

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<sup>3</sup> See footnote 2, above.

<sup>4</sup> In the due process complaint, Student separately alleged for the 2005-2006 school year that there was a "failure to assess in all areas of suspected disability (social/emotional)." At the hearing, Student's counsel clarified that this issue was not being alleged as a separate claim of a procedural violation, but instead provided evidence of Student's claim that IEP goals and services should have been provided for social/emotional needs. Student's Prehearing Conference Statement and Supplemental Prehearing Conference Statement withdrew all other "failure to assess" claims.

## CONTENTIONS OF THE PARTIES<sup>5</sup>

Student contends that he was denied FAPE during the 2003-2004 school year because his goals in reading and written language did not align with his needs or the appropriate state content standards. According to Student, his reading and writing needs were not met solely through his participation in an English special day class (SDC) because subsequent test scores demonstrated that he had not made educational progress in these areas. As to math, Student contends that he was denied a FAPE because although his IEP indicated that he would graduate with a regular diploma and college was a goal, he struggled in regular education Algebra. As to speech and language services, Student contends that the District testing was not accurate, and that testing done in 2001, 2004 and 2006 demonstrated his need for speech services. Student further contends that the speech services that were provided denied him FAPE because they relied on goals from his 2002 IEP and that speech services should not have been terminated as of March of 2004 without an assessment. In the area of social/emotional needs, Student contends that he was denied a FAPE because Mother testified that Student had self-esteem issues during high school, Student's expert was critical of testing done by the school psychologist in 2004, and as of 2007, Student's expert described him as "at risk." Finally, Student contends that he was denied a FAPE because his transition plan had insufficient input from him, lacked a discussion of how his academic skills would impact a goal of going to college, lacked follow-up from District staff, contained "generic" goals and did not adequately prepare Student to attend college.

Student further contends that he was denied a FAPE because at the March 15, 2004 IEP team meeting there was no discussion of whether Student had achieved his past

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<sup>5</sup> The parties' contentions were derived from their closing briefs in light of the issues alleged in the due process complaint. This section is not intended to be an exhaustive recitation, but merely an introduction to the reader.

goals and Student's present level of performance in reading and writing were inaccurately described.<sup>6</sup>

Student also contends that he was denied a FAPE during the 2004-2005 school year because his reading goal was not aligned to his greatest need, which was comprehension and fluency and his writing goal was focused on grammar and punctuation, rather than composition. According to Student, his placement in an English SDC was inadequate to meet his needs in reading and writing, such that he should have been offered intensive remediation. Student also contends that he was denied a FAPE because Mother had agreed to an eight-week reading program during the ESY of 2005, but the District unilaterally reduced the amount of services to six weeks. As to math, Student contends that he was denied a FAPE because although his IEP indicated that he would graduate with a regular diploma and college was a goal, an IEP was not convened when he repeated Algebra, but his grades failed to improve. As to speech and language services, Student contends that he should have been provided with services because expert testimony based on testing from 2001, 2004, and 2006 demonstrates that Student has an auditory processing deficit and higher order language problems. Student's contention as to his social/emotional needs and transition plan are the same as for the previous school year.

As to the 2005-2006 school year, Student contends that he was denied a FAPE because his reading and writing goals were not significantly changed from the prior school year, and his placement in an English SDC was inadequate to meet his needs in these areas. Student contends that his lack of educational progress in these areas is

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<sup>6</sup> Although Student also argued in his closing brief that he was denied a FAPE because neither the speech and language pathologist nor the school counselor were present to report on progress, no such allegation was contained in the due process complaint. Accordingly, this aspect of Student's contentions will not be addressed.

demonstrated by his final IEP in May of 2006, which proposed goals in reading at the fifth and sixth grade levels and writing at the fourth grade level and by Student's scores on educational testing performed in 2006 and 2007. As to math, Student contends that he was denied a FAPE because although he was originally placed in a math SDC, he ultimately received no instruction in math during this school year. As to speech and language, Student's contention is the same as for the 2004-2005 school year. Student's contentions regarding speech and language, his social/emotional needs and his transition plans are the same as for the previous school year.

The District generally contends that Student was not denied a FAPE at any time, particularly because Student passed the California High School Exit Exam and earned more than enough credits to graduate with a regular diploma. Specifically, as to the 2003-2004 school year, the District contends that standardized testing demonstrated that Student did not have a deficiency in mathematics, such that Student did not require math goals and/or additional services in this area. As to speech and language, the assertions of Student's private speech therapist at the time were not credible. As to reading goals and services, the District contends that Student's English SDC teacher developed Student's goals based on his class work and the California content standards. Student's reading needs were met in the core curriculum of his English SDC and his teacher reported slow but steady progress. As to written language, according to Student's English SDC teacher, his goals were developed to meet Student's unique needs, were derived from the California content standards, and could be met by the core curriculum. Finally, the transition plan for the 2003-2004 school year did not deny Student a FAPE because it was based on interviews with him, included goals related to post-secondary outcomes, and Student followed the plan by taking electives in his area of interest.

The District contends that Student was not denied a FAPE at the March 15, 2004 IEP because Student's present levels of performance in all areas were discussed at the meeting, as were the recommendations to discontinue speech and counseling services.

Student's present level of performance in reading was discussed in terms of his classroom performance in addition to his standardized test scores.

The District contends that Student was not denied a FAPE during the 2004-2005 school year. In the area of mathematics, standardized testing demonstrated that Student did not have a deficiency in mathematics, such that Student did not require math goals and/or additional services in this area. As to speech and language services, the District again contends that Student did not demonstrate that he had unmet speech and language needs. As to reading, the District contends that Student's goals were developed by his teacher to meet his unique needs and were consistent with California content standards. As to reading remediation, Student was offered a FAPE in the form of the Special Education Local Plan Area (SELPA) Lindamood-Bell reading program, in the fall of 2004, which was refused. Student's reading needs were met in an English SDC, a History SDC, by Student's participation in theater electives and by providing Lindamood-Bell services during the 2004- 2005 ESY. As to written language, the District contends that Student's goals were designed to meet Student's unique needs and conformed to the California content standards and that Student's needs were met by instruction in the English SDC and History SDC. As to Student's social/emotional goals and needs, the District contends that testing and observation by the school psychologist and teacher observations demonstrated that Student did not have unmet social/emotional needs. The District contends that it did not unilaterally alter Student's IEP for the 2004-2005 ESY after Mother signed it. Finally, as to the transition plan, the District contends that it accurately reflected post-school outcomes and interests because it was based on interviews with Student, Student followed the plan by participating in activities and electives consistent with his interests, Student was administered the Wide Range Interest and Opinion Test, and Student participated in employment through the Workability program as specified in the plan.

Finally, the District contends that Student was not denied a FAPE during the 2005-

2006 school year. As to Student's reading needs, the District contends that Student was provided a FAPE by the English SDC, and the District's offer of SELPA Lindamood-Bell services and individual participation in the SRA Corrective Reading program, both of which were declined by Mother. As to Student's writing needs, Student was provided a FAPE by participation in the English SDC and by the Workability program assisting Student with resume drafting. As to mathematics, standardized testing demonstrated that Student did not have a deficiency in mathematics, such that Student did not require math goals; moreover, mathematics was an elective for Student during this year, and after Student requested to drop a general education geometry class, Student did not sign up for mathematics. As to speech and language services, Student did not have needs in this area. As to Student's social/emotional goals and needs, the District contends that previous testing and observation by the school psychologist and teachers demonstrated that Student did not have unmet social/emotional needs. As to the transition plan, the District contends that it provided a FAPE because it was developed with Student's input, Student took electives consistent with his stated career interests, the plan contained post-secondary goals related to training, education and employment, and Student participated in the Workability program.

## FACTUAL FINDINGS

### JURISDICTION AND BACKGROUND

1. Student is an 18-year-old male who, while enrolled in the District during the relevant time periods, was eligible for special education and related services under the category of specific learning disability based on a severe discrepancy between academic performance in reading and his intelligence.<sup>7</sup>

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<sup>7</sup> Student's IEP's for some of the time periods covered by this Decision also use the words "language impaired," in the recitation of Student's eligibility. However, the evidence at hearing demonstrated that although speech and language therapy was

2. Student graduated from a District high school at the end of the 2005-2006 school year with a regular diploma. Student had earned more credits than were needed for graduation, had passed the California High School Exit Exam (CAHSEE), had a 2.98 grade point average and a class rank of 276 out of 586.

#### MATHEMATICS GOALS AND SERVICES FROM OCTOBER 6, 2003 UNTIL GRADUATION

3. Student alleges that he was denied a FAPE on numerous grounds beginning October 6, 2003 (the earliest date Student could allege a violation in light of the three year statute of limitations) and the time he graduated in June of 2006. In general, a school district provides a FAPE to a student if its program or placement was designed to address the student's unique educational needs and was reasonably calculated to provide some educational benefit in the least restrictive environment. If a school district has provided special education and related services that meet the above factors, it has provided a FAPE, even if the student's parents preferred another program or another program would have resulted in greater educational benefit to the student than the program offered by the district. The district's program need not maximize the student's potential. An IEP is reviewed in terms of what was, or was not, objectively reasonable at the time it was drafted. Goals in an IEP must be designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum.

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provided to Student as a related service until March of 2004, he was never found eligible for special education under the category of speech and language impairment. Evidence was also produced that Student had Attention Deficit Disorder (ADD) and a medical condition called neurofibromatosis, however, these conditions are not referenced in Student's IEP's and no evidence was produced that these conditions were the basis of Student's eligibility for special education during the relevant time periods.

## Unique Math Needs

4. Student achieved a score of "far below basic" in Mathematics on the Standardized Testing and Reporting (STAR) test administered in spring of 2002, when Student was in eighth grade. Student's score improved to "below basic" on the STAR test administered in spring of 2003.

5. As of October 6, 2003, Student was enrolled in Algebra I, part 2, a general education math class. Student obtained a grade of "C" for the fall quarter. Student obtained a grade of "D" in the spring quarter, which was considered passing.

6. Student took the CAHSEE on March 17, 2004, and achieved a score of 347 in Mathematics. A score of 350 was required to pass, demonstrating that during this year, Student's math skills were close to those required for graduation. Student also took the STAR test in the spring of 2004, and achieved a score 279, just 21 points below the 300 points needed to be considered to have "basic" proficiency.

7. Student was given the Woodcock-Johnson Tests of Achievement, 3rd edition (WJ-III) on March 11, 2003, by Alexandra Hofmeister (Hofmeister), a then-recent employee of the District with an emergency teaching credential. Hofmeister possessed a bachelor's degree in therapeutic recreation at the time.<sup>8</sup> Hofmeister's administration of the WJ-III showed that Student achieved an "average" score of 93 on the "Broad Math" cluster and standard scores of 88, 90, and 112 on the Calculation, Applied Problems and Math Fluency subtests, respectively. Student's scores did not indicate any deficit in math at the time. No evidence was introduced that these scores were inaccurate in any way.

8. Teacher comments gathered by Hofmeister in anticipation of the March 15, 2004 IEP team meeting reflected that Student's Algebra homework was incomplete or "extremely difficult to comprehend."

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<sup>8</sup> Hofmeister subsequently obtained a teaching credential in December of 2005 and a master's degree in special education in April of 2006.

9. During the ESY in the summer of 2004, Student achieved a grade of "B" in a CAHSEE study skills class. The CAHSEE study skills class used test materials and provided tips on how to go about answering questions.

10. Hofmeister administered the WJ-III to Student on September 23, 2004. Student achieved average standard scores as follows: Broad Math – 92; Math Calculation – 97; Calculation – 92; Math Fluency – 104; and Applied Problems – 89. These scores indicated that Student did not have unique math needs.

11. During the fall of 2004, Student repeated Algebra 1, part 2, in an attempt to raise his grade. On September 29, 2004 Student's Algebra I, part 2, teacher reported to Hofmeister that Student was doing his work and that his grade to date was 34/36 or 94 percent.

12. Student took the CAHSEE on November 17, 2004, and achieved a passing score of 379 in Mathematics. A score of 350 was required to pass. This achievement indicated that Student did not have unique math needs. Math was not a graduation requirement after Student passed the CAHSEE.

13. For the Fall quarter of 2004 and the Spring quarter of 2005, Student achieved a grade of "D" in Algebra I, part 2. Student attributed his grade to difficulty with understanding the concepts and difficulty with fractions. However, Student's Algebra teacher reported on March 9, 2005, that Student was not retaining what he learned, partly because he was not completing his homework assignments. Thus, it can be inferred that Student's difficulties in raising his grades could partially be attributed to failure to complete homework.

14. Student achieved a "basic" score of 310 on the Algebra I section of the Spring 2005 STAR test, demonstrating that he did not have a unique need in math and had received some educational benefit in Algebra.

15. Student was assessed by Karen Schnee (Schnee) in January of 2006. Schnee possessed a bachelor's degree in child development, California teaching credentials, a

master's degree in special education and was a licensed speech pathologist. Since 2001, Schnee had been in private practice, testing children with learning disabilities and advocating for them at IEP team meetings, mediations and due process hearings. Schnee's prior experience included testing for learning disabilities at Los Angeles Pierce College and speech pathology work in hospitals and schools. Overall, the credibility of Schnee's opinions and testing was diminished because her reports were not made available to District personnel until the hearing, Schnee had published an article with Student's counsel entitled "How to Write an Assessment Report: A Litigation Perspective," and Schnee demonstrated that her report was prepared with a bias toward litigation by reporting some test scores in grade equivalents rather than standard scores at the request of Student's counsel. Schnee's use of grade-equivalent scores made it more difficult to compare standardized tests.

16. Schnee acknowledged that Student had achieved average scores of 93 on the WJ-III Broad Math Composite administered by the District in 2004, and an average score of 94 on Schnee's January of 2007 WJ-III Broad Math Composite. Schnee acknowledged, and school psychologist Rosalind Myatt, Ph.D. (Dr. Myatt) agreed, that for Student to get a similar score on the WJ-III years later would require Student to answer more questions correctly. This supports an inference that Student did not have a unique need in math and received educational benefit during the relevant time period. Schnee opined that despite the above, Student's math skills would still require remediation based on testing by El Camino Community College (El Camino); however, Schnee had no knowledge of what was on the El Camino math tests, rendering her opinion unpersuasive.

17. Rita Eichenstein, Ph.D. (Dr. Eichenstein), first met Student on March 28, 2007, and assessed him in March, April and May of 2007, for a total time of eight hours. Dr. Eichenstein obtained her Ph.D. from the unaccredited California Graduate Institute. Dr. Eichenstein's practice is limited to neuropsychological testing of school-age children and parent skills training. On Dr. Eichenstein's 2007 administration of the WIAT-2

Numerical Operations and Math Reasoning subtests, which do not include Algebra or Geometry, Student achieved standard scores of 92 (grade equivalent 8.5) and 88 (grade equivalent 8.2). Student showed an increase in “math reasoning,” when compared to Student’s standard score of 90 (grade equivalent 6.0) on the Applied Problems subtest of the WJ-III that had been administered to Student on September 23, 2004. Dr. Eichenstein recommended that despite Student’s “average mastery of basic math abilities” he needs an unspecified “individualized remediation program.” This recommendation is entitled to no weight given the lack of specificity and the failure to account for Student ultimately passing the CAHSEE, demonstrating that he had met California’s math requirements.

18. Dr. Eichenstein and Schnee agreed that Student experienced difficulty with mathematics that involved written problems like those in Algebra and Geometry. They plausibly explained that Student’s performance in Algebra and Geometry would be improved if Student’s reading fluency and comprehension skills improved. Accordingly, it can be concluded from their testimony that although Student had reading needs, he did not have unique needs in mathematics during the relevant time periods.

#### Math Goals

1. None of Student’s IEP’s during the relevant time period contained math goals. As set forth in Findings 1, and 4 through 18, Student did not have unique needs in math that resulted from his disability. Accordingly, math goals were not required in Student’s IEP’s.

#### Math Services

20. In the fall of 2005, Student was enrolled in a math SDC called “High School Math.” Approximately one month into the semester, Student transferred to general education geometry because “High School Math” was too easy for him. After one day in general education geometry, Student asked to be removed because he could not understand the teacher, who spoke with an accent. Student replaced his math class with

an elective called "office aide" in which he assisted in the school office with filing and the collection of test materials. No evidence was produced that the District imposed these schedule changes on Student, and instead, the evidence demonstrated that the District could have provided Student with another geometry class if Student had expressed an interest in enrolling. It cannot be inferred that the District denied Student a FAPE by not providing a math class during the 2005-2006 school year.

21. As set forth in Findings 2, and 4 through 18, Student did not have unique needs in math that resulted from his disability. Accordingly, Student did not require related services in math during the relevant time period. Further, as set forth in Finding 20, the District also did not deny Student a FAPE in the 2005-2006 school year by failing to offer him an appropriate math class.

#### SPEECH/LANGUAGE GOALS AND SERVICES FROM OCTOBER 6, 2003 UNTIL GRADUATION

##### Unique Speech/Language Needs

22. Los Angeles County Office of Education (LACOE) speech and language specialist Barbara Tillotson and Darlene Merle (who at the time was training under Tillotson) administered the Clinical Evaluation of Language Fundamentals, Third Edition (CELF-3) and The Listening Test in March of 2000.<sup>9</sup> Based on Student's standard score of

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<sup>9</sup> Some of the Findings regarding Student's speech and language needs relate to testing as early as the year 2000. Although generally testing that was not conducted around the time an IEP was developed would have little relevance, in the instant case, the testing has been considered because no speech and language evaluation was conducted by the District between April 16, 2001, and the time speech and language services were ended on March 15, 2004. At hearing, there was testimony regarding the circumstances under which a 2003 triennial evaluation was waived. However, because any waiver occurred outside the statute of the limitations, no inferences will be drawn from that

103 on the CELF-3 and 101 on the Listening Test, Tillotson and Merle concluded that Student did not have speech and language needs at the time.

23. Dr. Myatt performed a psychoeducational assessment of Student in March of 2000 that included, among other things, the Test of Auditory Perceptual Skills – Revised (TAPS-R), which assessed auditory processing as it related to classroom performance. On the TAPS-R, Student’s lowest standard score was 82 on the number memory subtest, but overall, Student achieved a standard score of 100 in auditory processing, a solidly “average” result, from which it could be inferred that Student did not have an auditory processing disorder. At the time of the testing, Student was taking Ritalin for his ADD. Student did not present evidence demonstrating that Dr. Myatt’s testing was in any way inaccurate.

24. Student’s annual IEP dated March 30, 2000, provided for group/individual speech and language therapy services one to two times per week for 20-30 minutes per session. Student’s speech goal was limited to articulation to address Mother’s concern that Student was mumbling. By the March of 2001 IEP, Merle did not observe that Student had speech and language needs based on her work with him in therapy.

25. Private audiologist Rosalyn Firemark assessed Student in 2001 and 2006. Firemark has a master’s degree in audiology, was a licensed audiologist, and had a certificate of clinical competence from the American Speech-Language Hearing Association (ASHA). Firemark assessed Student for an auditory processing disorder during a two-hour session on May 10, 2001. Firemark concluded in 2001 that Student had an auditory processing disorder because Student failed two non-verbal tests, the Pitch Pattern Sequence Test and the Auditory Fusion Test. At the time, Firemark noted that on the Pitch Pattern Sequence Test, Student needed to be taught the difference between “high” and “low” pitch for purposes of the test. On the Auditory Fusion test, which

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testimony.

required Student to identify whether one or two sounds were heard, Firemark noted that his performance “could be due to guessing or attentional problems.” Student also scored two standard deviations below the norm for his age on the Staggered Spondaic Word Test (SSW), which required listening with both ears to overlapping words. Student “passed” the SCAN Filtered Speech Test, which required Student to fill in missing sounds in words.

26. As of 2001, Firemark concluded that Student’s specific difficulties were “temporal processing and dichotic listening” complicated by ADD. Firemark recommended “intensive auditory training focusing on teaching auditory attention and maintaining vigilance, auditory analysis and synthesis and phonemic awareness training. These difficulties would manifest in school as a difficulty listening and responding to directions such that Student might “get lost,” rapid changes of subject would be difficult and unfamiliar vocabulary would require pre-teaching and learning of vocabulary in context.

27. Firemark’s testing as of May 10, 2001, does not demonstrate that Student should have been provided with speech and language services between October 6, 2003, and the time Student graduated. First, Firemark’s tests that showed Student had some weaknesses were not verbal tests and Student’s scores were unreliable based on his need to be instructed regarding differences in pitch prior to one test and the possibility that his ADD impacted his attention to tests that consisted of listening for sounds. Further, although Firemark opined that Student could not compensate for any auditory processing weakness had, Firemark’s results on the SCAN Filtered Speech Test demonstrated that Student did have the ability to fill in missing parts of words.

28. Student received private speech and language therapy services from Janice DeMore (DeMore) from 1997 through 2004. DeMore was a licensed speech pathologist with a bachelor’s degree and master’s degree in communicative disorders. From 1997 through 2000, DeMore saw student for two 45-minute session per week. After 2000,

DeMore saw Student for one 45-minute session per week.

29. On August 5, 2000, DeMore issued a progress report. On the Listening Test, Student obtained the following standard scores: Main Idea – 96 (34th percentile); Details – 84 (16th percentile); Concepts – 89 (21st percentile); Reasoning – 99 (41st percentile); Story Comprehension – 110 (73rd percentile).

30. On November 1, 2000, DeMore issued a progress report that included standard scores from the Test of Language Competence, Expanded Edition (TLC-E), as follows: Ambiguous Sentences – 6 (9th percentile); Listening Comprehension – 6 (9th percentile); Oral Expression – 5 (5th percentile); Figurative Language – 10 (50th percentile); Screening Composite – 85 (16th percentile); Expressing Intents – 73 (4th percentile); Interpreting Intents – 88 (21st percentile); TLC-E Composite – 78 (7th percentile). On the SCAN-A test for auditory processing disorders, Student's total standard score was 62 (1st percentile). On the TAPS-R, Student obtained the following scores: Auditory Number Memory Forward – 9 (32nd percentile); Auditory Number Memory Reversed – 7 (19th percentile); Auditory Sentence Memory – 6 (12th percentile); Auditory Word Memory – 8 (30th percentile); Auditory Interpretation of Direction – 7 (19th percentile); Auditory Word Discrimination – 11 (68th percentile); Auditory Processing – 7 (13th percentile); and Auditory Quotient 86 (18th percentile). DeMore interpreted her results as showing that Student had difficulty understanding speech in compromised environments, however, DeMore was not qualified to diagnose auditory processing disorders.

31. Merle administered the Word Adolescent test on April 16, 2001, and Student achieved standard scores within the "normal" range. Based on her experiences providing speech therapy to Student and her test results, Merle did not believe that Student had speech and language needs.

32. DeMore prepared a progress report dated March 10, 2003, which purports to show test results from the TLC-E, SCAN-A and TAPS-R. DeMore's report does not

indicate the dates of testing, yet comparison of the results to the results reported in DeMore's November 1, 2000 progress report shows that all of the scores reported are exactly the same on each and every subtest and composite score. Although DeMore appeared credible when she testified that she could not remember whether she readministered the tests, she was unable to provide the test protocols to help verify when the tests were given. It is simply too much of a coincidence for test results on multiple tests to be exactly the same three years apart. Accordingly, DeMore's progress report dated March 10, 2003, cannot be considered to have any evidentiary value for determining Student's speech and language needs for the 2003-2004 school year or any subsequent school year.

33. DeMore testified that Student needed speech therapy because even though the results of basic language tests did not necessarily indicate a need for speech therapy, her subjective opinion was that Student had difficulty expressing himself. DeMore's testimony on this point was not credible, particularly when Student ably testified at hearing and only appeared to have difficulty answering one question.

34. During some of her 2003-2004 speech therapy sessions with Student, DeMore focused on helping Student with his World History class by outlining the textbook and centering therapy sessions around the content. According to ASHA, it may be appropriate for a speech language pathologist to assist a child with reading comprehension when a child exhibits a reading problem. It can be inferred from this testimony that Student did not have speech and language therapy needs.

35. Around the time of the March 15, 2004 IEP, DeMore advised Mother that Student could be removed from school-based speech therapy. Student told Mother that during District therapy sessions he would tell the District therapists not to bother because he had learned everything already from DeMore.

36. De More issued an end of therapy report on June 20, 2004. DeMore concluded that Student continued to exhibit deficits in higher order language tasks and

would need support in reading and writing. DeMore's recommendations did not include a recommendation to continue speech therapy. DeMore testified that therapy was discontinued because Student was "burned out" and had other after-school activities like tutoring. DeMore's test results were not credible because no test protocols were provided for verification, only one standardized test was administered, and as discussed in Finding 32, DeMore had demonstrated that her reports were not necessarily reliable. Moreover, even if considered reliable, there was no evidence that this report was ever shared with the District during the 2003-2004 school year.

37. In January of 2006, Schnee assessed Student using the Wide Range Assessment of Memory and Learning - 2 (WRAML-2), a test of Student's ability to learn and memorize information. Schnee concluded that Student's auditory memory was stronger than his visual memory based on standard scores of 102 for recognition of orally presented information and 87 for recall of visually presented information. Schnee's results were not provided to the District until the time of hearing, but support an inference that Student has strength in auditory memory.

38. Schnee also administered the Test of Adolescent and Adult Language (TOAL-3) to Student in January of 2006, and obtained the following standard scores/percentile rankings: General Language – 75/5; Listening – 88/21; Speaking – 67/1; Reading 85/16; Writing – 73/3; Spoken Language – 75/5; Written Language 77/6; Vocabulary – 85/12; Grammar – 70/2; Receptive Language – 85/16; and Expressive Language – 67/1. According to Schnee, the results of the above test demonstrate a speech and language need; however, these results were not shared with the District until the hearing.

39. Schnee also administered the Woodcock-Johnson-III Auditory Processing Composite to Student in January of 2006, and obtained the following standard scores: Sound Blending -106; Incomplete Words – 93, Memory for Words – 80; and Auditory Attention – Student's scattered performance caused Schnee to administer the TAPS-3,

which yielded the following scaled scores/percentile ranks: Word Discrimination – 12/75; Phonological Segmentation – 5/5; Phonological Blending – 9/37; Number Memory Forward – 9/37; Number Memory Reversed – 9/37; Word Memory – 4/2; Sentence Memory – 2/<1; Auditory Comprehension – 8/25; and Auditory Reasoning – 7/16. Schnee concluded that Student continued to exhibit phonological awareness and phonological memory weaknesses based on the above results, and the results of the Comprehensive Test of Phonological Processing (CTOPP), on which Student achieved a standard score of 55 and 61 on the Phonological Awareness Composite and the Phonological Memory Composite, respectively. According to Schnee, the above phonological deficits would impact Student’s ability to read. This assessment was not provided to the district until the hearing.

40. Firemark assessed Student on June 28, 2006, after he had graduated from high school. Her report was not provided to the District until the hearing. On the SCAN-A Test, Student was in the “normal” range on the Filtered Words subtest (that required filling in the missing parts of words to obtain meaning), but exhibited difficulties with subtests such as the Auditory Figure Ground, which requires discrimination of sounds with interference, and the Competing Words and Competing Sentences subtests, which require discriminating competing input to each ear. Student’s performance on the SCAN-A indicated a right ear advantage suggesting an abnormality in the auditory neurological system, however, the results of the SSW did not show this abnormality. Student was in the “normal” range on the non-verbal Duration Pattern Sequence Test, which was “significantly better” than Student’s performance on similar tests administered in 2001. Although Student continued to demonstrate difficulty with dichotic listening tasks, his performance on the SSW was also “much improved” over the 2001 test result and was now “normal.”

41. Firemark surmised that Student’s improvements as measured in 2006 were the “result of the long term speech therapy, a Lindamood-Bell program and other

interventions that have been provided.” Firemark recommended that Student would benefit from classroom modifications and accommodations such as reduction of background noise, visual aids, pre-teaching vocabulary, smaller amounts of information and verbatim repetition. Firemark also recommended that Student receive “direct remediation” from a speech/language pathologist for three individual sessions per week focusing on “auditory training, temporal processing, phonemic awareness, listening in noise and dichotic listening.” Firemark also noted that “the benefits of the Lindamood-Bell program appear to have carry- over improvements in auditory processing.” Although Firemark’s testing may be interpreted to show that at present Student has some auditory processing weaknesses, Firemark’s recommendations are not persuasive evidence that Student was denied a FAPE at any relevant time. Firemark had no interaction with Student between her 2001 and 2006 testing and no knowledge of Student’s actual classroom performance or the teaching methods employed in class. DeMore testified that she did some “auditory training” with Student in the past for a period of five months until Student no longer needed it. Student’s scores on Firemark’s testing improved between 2001 and 2006, despite Student not having speech therapy of any kind since approximately March of 2004, and despite Student having attended Lindamood-Bell for only 120 hours during the summer of 2005.

42. During all relevant time periods, Student successfully participated in a general education theater arts class that required performing plays and monologues before a group. Student was graded on his performances, and his grades of “A” and “B” support a finding that he did not have speech and language needs.

#### Speech and Language Goals

43. Neither the March 18, 2003 IEP nor the September 25, 2003 addendum contained a speech and language goal.<sup>10</sup>

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<sup>10</sup> Any issue regarding the propriety of these IEP’s is outside the three year statute

44. Merle used the following speech and language goal from Student's March 18, 2002 IEP (as amended on 3/20/02) to implement the September 25, 2003 IEP addendum: "[Student] will be given some strategies to organize information into paragraph form with a topic sentence and other sentences to support that, when he presents himself verbally in academic subjects." This goal was appropriate in light of Student's testimony that he had trouble finding his words when speaking.

#### Speech and Language Services

45. On September 25, 2003, Mother signed an IEP addendum to the March 18, 2003 IEP that provided for 30 minutes of group speech and language therapy per week to be provided by District personnel. Student testified that the speech/language sessions included reading comprehension materials like those used in his English class.

46. At the March 15, 2004 IEP team meeting, Mother signed her agreement to the discontinuation of speech and language services.

47. Firemark was of the opinion that one speech therapy session per week as set forth in the September 19, 2003 IEP addendum was inadequate to address Student's auditory processing deficits and disagreed with the IEP team decision to terminate speech services as of the March 15, 2004 IEP meeting. However, Firemark's opinion on these points is not persuasive because the only times Firemark had assessed Student for auditory processing disorder was in 2001 and in 2006, two to three years prior to the relevant time periods or after Student had graduated from high school. On Firemark's 2006 assessment Student showed many improvements (see Finding 40, above), further demonstrating that Firemark had no basis to infer what Student's abilities were between October 6, 2003, and the time speech and language services were terminated on March 15, 2004.

48. DeMore testified that despite her discharging Student, she would have

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of limitations.

recommended that as of March of 2004, Student should have received at least two, 25 minute speech therapy sessions per week. DeMore's opinions regarding Student's needs for speech therapy services during the relevant time periods were not persuasive.

DeMore had no knowledge of the assessments given to Student at school or the speech therapy services provided to Student at school and had not formulated any recommendation at the time Student discontinued private speech therapy.

49. Findings 22 through 42, and 45 through 48, above, demonstrate that the District was not aware of facts demonstrating that Student had unique speech and language needs that required more than 30 minutes of group therapy services prior to March 15, 2004, or any speech and language services between March 15, 2004, and graduation.

#### READING GOALS AND SERVICES FROM OCTOBER 6, 2003 UNTIL GRADUATION

##### Unique Reading Needs

50. Student achieved a score of "far below basic" in English-Language Arts on the STAR test administered in spring of 2002, when Student was in eighth grade. Student's score had improved to "below basic" on the STAR test administered in spring of 2003.

51. Student obtained a Broad Reading cluster score of 66 on Hofmeister's March 11, 2003, administration of the WJ-III. Student achieved the following standard scores on the WJ-III reading subtests: Letter-Word Identification – 89; Reading Fluency – no score; and Passage Comprehension – 82. Hofmeister improperly calculated the Reading Fluency subtest using the Compuscore program by improperly inputting the remaining items on the test as the number incorrect. Looking at the handscore, Student achieved a total score of 47 on the Reading Fluency subtest, which equated to a grade equivalent of 5.6. Review of the test protocols shows that Hofmeister's calculation of 47 is correct because Student answered up to question 62 in three minutes, but got 2 incorrect and left 13 questions unanswered. The test protocols state that the total score is

calculated by subtracting the number incorrect from the number correct. In other words as to Student's performance on this subtest, 62 minus 15 (2 incorrect and 13 unanswered) is equal to 47. The incorrect Compuscore of the Reading Fluency subtest also rendered the Broad Reading cluster score inaccurate. The Broad Reading cluster score would have actually been higher; however, at the time the District assumed it was accurate.<sup>11</sup>

52. The present levels of reading performance in Student's March 18, 2003 IEP were: "[Student] is currently showing a low reading ability. [Student] seems to struggle with some words; he will sound them out very quickly and moves on to the next ones without asking for clarification." However, as of June 17, 2003, Hofmeister reported that Student had made "substantial progress," in reading but that his progress was not sufficient to meet his annual IEP goal. Hofmeister's report of "substantial" progress was not credible given the contrast to Student's present level of performance.

53. An IEP team meeting was held on March 15, 2004. Student's present level of performance in reading was incorrectly stated as: "[Student] is currently showing an

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<sup>11</sup>In the District's closing brief, the District set forth recalculated Broad Reading scores for the March 11, 2003, and September 23, 2004 WJ-III tests administered to Student by Hofmeister. After the closing briefs were filed, Student filed a motion to strike based on the ALJ's in limine ruling that barred the District from introducing evidence of recalculated academic performance scores for purposes of disputing Student's eligibility for special education. The motion to strike is granted because no evidence was produced at hearing regarding what the actual scores on the Broad Reading clusters would have been. However, granting the motion to strike does not prevent the ALJ from acknowledging and explaining for context that Student's actual scores on the Broad Reading cluster were higher than reported by Hofmeister, particularly when it was Student who first introduced the evidence at hearing that Hofmeister had miscalculated the Reading Fluency subtests scores.

average reading level. [Student] is less hesitant to read among his classmates, yet he tends to rush through assignments.”

54. Student took the CAHSEE on March 16, 2004, and achieved a score of 327 in English-Language Arts. A score of 350 was required to pass. The CAHSEE tested at approximately the ninth grade level.

55. Student took the STAR test in the Spring of 2004, and achieved a score 296 in English-Language Arts, four points shy of the 300 points needed to be considered to have “basic” proficiency.

56. On Hofmeister’s September 23, 2004 administration of the WJ-III, Student achieved a Broad Reading standard score of 68. On the reading subtests, Student achieved the following standard scores: Letter-Word Identification – 83; Reading Fluency – 58; and Passage Comprehension – 84. The Passage Comprehension subtest score should have been slightly lower because Hofmeister incorrectly reported the number correct as 31 instead of The Reading Fluency raw score of 6 that resulted in a 58 standard score as scored by the Compuscore program was incorrect. Hofmeister testified that the correct raw score was 52 because she had incorrectly hand scored the number incorrect as 46, whereas review of the test protocol shows that the number incorrect should have been zero. A raw score of 52 on the Reading Fluency subtest is equivalent to grade level 6.7. The incorrect Compuscore on the Reading Fluency subtest rendered the Broad Reading cluster score of 68 inaccurate, and it was actually higher. Because the District assumed at the time that Broad Reading score of 68 was accurate, it demonstrates that at the time, Student had significant reading needs and had made little or no progress in reading since the March of 2003 WJ-III.

57. Amy Alfonso (Alfonso) was formerly a school psychologist for the District who possessed a master’s degree in educational psychology and counseling and credentials as a school psychologist and counselor. Alfonso prepared a psychoeducational report regarding Student on October 4, 2004. Alfonso confirmed that

Student remained eligible for special education under the category of learning disabled based on the discrepancy between his intelligence standard score of 94, as measured by the CTONI, and his reading abilities, as measured by Student's standard score of 68 on the Broad Reading cluster on Hofmeister's administration of the WJ-III.

58. Hofmeister wrote a progress report dated November 15, 2004, which stated that Student was making progress toward his reading goals and that Student was benefiting from being in drama classes.

59. Student took the CAHSEE on November 16, 2004, and achieved a score of 329 in English-Language Arts. A score of 350 was required to pass.

60. An IEP team meeting was held on March 14, 2005, at which time Student's present level of performance in reading was reported as: "[Student] continues to display an average reading level. [Student] is able to interpret information from the text at reading level. He is more willing to read aloud during class. He is able to identify plot and summarize the character's interactions. In the script *Of Mice and Men* [Student] is able to analyze the plot and character's motivations." Hofmeister admitted at hearing that the phrase "average reading level" was inaccurate.

61. At hearing, Hofmeister testified that Student had made progress in reading between the March 2004 and March 2005 IEP's because Student became better able to answer questions about the material. Hofmeister's progress report does not establish that Student made progress in silent reading because the class material was read aloud.

62. Student took the CAHSEE on March 15, 2005, and achieved a score of 347 in English-Language Arts. A score of 350 was required to pass.

63. Student took the STAR test in the spring of 2005 and achieved a "below basic" score of 280 in English-Language Arts.

64. Student took the CAHSEE on September 13, 2005, and achieved a score of 341 in English-Language Arts. A score of 350 was required to pass. A report of the scoring showed that Student's weakest area, and the likely reason he did not pass, was

reading comprehension.

65. Schnee tested Student's reading level in January of 2006 with the Test of Word Reading Efficiency (TOWRE), on which Student received a low average standard score of 86. In addition, to test reading comprehension, Student was administered the Test of Reading Comprehension -3 (TORC-3), on which Student achieved a standard score of 72, indicating a deficit in reading comprehension. The TORC-3 subtests yielded the following grade-equivalent scores: General Vocabulary – 4.2; Syntactic Similarities – 4.2; Paragraph Reading – 4.0 and Sentence Sequencing – 5.2.

66. Student took the CAHSEE in English-Language Arts on February 7, 2006, and passed with a score of 356 (350 was required to pass).<sup>12</sup>

67. An annual and/or transition IEP team meeting was held on May 18, 2006. Student's parents did not consent to the IEP. The present levels of performance for reading in the unimplemented May 18, 2006 IEP note that Student's reading ability was "very low."

#### Reading Goals

68. The reading goal in the March 18, 2003 IEP was: "By March 17, 2004, when given a graded vocabulary list from the core literature, [Student] will list and compare the figurative and literal meanings of words and how that impacts text meaning with 80% accuracy in 4 of 5 trials as measured by student work samples." Hofmeister conceded that this is not a reading fluency or comprehension goal but is a "vocabulary and concept development" goal like those found in the grades nine and ten California content

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<sup>12</sup> Dr. Eichenstein opined that Student's passage of the CAHSEE may have been a result of the "practice effect" (an increase in test scores caused by familiarity). However, in light of the Legislature's determination that students may take the CAHSEE until they pass it (see Ed. Code, § 60851, subd. (b)), no inference was drawn from Student taking the CAHSEE numerous times.

standards. Hofmeister conceded that a reading fluency and comprehension goal should have been written at the fifth or sixth grade level. Given that the March of 2003 WJ-III yielded a Broad Reading score of 68 (which at the time the District thought was accurate) and accurate grade equivalent score of 5.6 in reading fluency and 4.0 in passage comprehension, this goal was not designed to meet Student's needs because it did not address reading fluency and comprehension.

69. The reading goal in the March 15, 2004, IEP was: "By March 2005, when given grade level text, [Student] will analyze interactions between characters and explain how they affect the plot by verbally summarizing the character's motivation, relationships, influences and conflicts with 80% accuracy in 4 of 5 trials as measured by teacher observation." This goal is a ninth and tenth grade "narrative analysis" goal according to the California content standards, which did not directly address reading fluency or comprehension, which were Student's greatest areas of need according to the District's WJ- III testing.

70. The reading goal developed for the March 14, 2005 IEP, which remained in effect until Student graduated, was, "When given grade level appropriate text, [Student] will list 80% of the main and subordinate character's traits by reviewing what characters say about themselves in dialogue." Hofmeister testified that this goal was a modification of Student's prior goal, but was unable to explain exactly what California content standard the goal was aligned with. Hofmeister generally described the goal as a reading and/or listening comprehension goal given that some of the material was read aloud in class. Under the California content standards, this goal is a literary response and analysis goal for ninth and tenth grades. This goal was not designed to meet Student's needs at the time as it is many grade levels above the reading levels identified in the September 23, 2004 WJ-III and does not address reading fluency, which was identified as Student's greatest area of need.

71. The unimplemented May 18, 2006, IEP proposed a reading goal that "When

given texts at his reading level, [Student] will state the main idea of the text and identify at least three statements within the text that support the main idea, as well as identify and paraphrase figurative language, when it occurs, with 80% accuracy on 9 out of 10 occasions as measured by student work samples." The IEP noted that the goal would enable Student to progress in the general curriculum, in particular, fifth grade reading standard 5.1 and sixth grade reading standard 6.2. Jason Naudus (Naudus) taught Student in the 2004-2005 and 2005-2006 school years. Naudus drafted the goals based on his credible perception of Student's weakest areas in order to provide information on what skills Student would need post-high school. Although the propriety of this goal is not at issue, it supports an inference that Student's reading goals in prior years were linked to inapplicable content standards.

#### Reading Services

72. Hofmeister taught Student's English SDC class in the 2003-2004 school year. The curriculum included reading books aloud in class, vocabulary review, reading comprehension questions, writing assignments related to the material read in class and reading fluency. Teaching was done using visual strategies. Reading fluency and comprehension were part of the core curriculum for the class. Hofmeister saw "slow" progress in Student's reading fluency and comprehension over the year but felt that Student made the most progress in comprehension and analysis.

73. The March 15, 2004 IEP meeting notes reflect that the team discussed the "FastForWord" reading program. However, no evidence was introduced that this program would have met Student's reading needs.

74. An IEP team meeting was held on October 4, 2004, to discuss the results of Student's recent WJ-III Tests of Achievement. At the IEP team meeting, the team discussed providing Student with a ten-week Lindamood-Bell program through the District's SELPA. The SELPA Lindamood-Bell program was run by Lindamood-Bell. Mother rejected this option because it would require Student to forego his theater arts electives

and Mother did not think that Student would benefit from the SELPA Lindamood-Bell program because it provided group instruction. "FastForWord" was also discussed but rejected because Student had previously participated in this program. The IEP team discussed the benefits that Student was receiving from participating in theater electives and determined not to change Student's schedule at that time. The Lindamood-Bell program was kept open as an option for the summer ESY session. The offer of the SELPA Lindamood-Bell program at this time was designed to meet Student's unique needs in reading and was reasonably calculated to provide some educational benefit.

75. The curriculum in Student's SDC English class during the 2004-2005 school year was similar to that in 10th grade, with the majority of reading being done aloud in class. Reading fluency and comprehension were taught as part of the core curriculum.

76. Naudus taught Student's United States History SDC in the 2004-2005 school year. Naudus had experience as a special education teacher prior to his employment by the District, and possessed a bachelor's degree in psychology, and a master's degree in special education. Naudus taught the material by having an introductory session in which students were asked question about the new material to "spark prior knowledge," followed by the class reading the material together to introduce it in a visual and auditory way. Naudus would discuss the material with students to answer any questions they had, after which the students would answer short questions or do matching exercises in order to apply the material. The textbook used was "America's Story," a special education textbook that presented the material in a more direct fashion with less detail.

77. Student was provided 120 hours of one-to-one instruction in the Lindamood- Bell program during the summer of 2005 (the ESY for the 2004-2005 school year). Specifically, Student had 82 hours of instruction in "Seeing Stars" and 38 hours of instruction in "Visualize Verblize." Student was offered one-to-one instruction at a Lindamood-Bell clinic because there was no space available in the District's SELPA Lindamood-Bell program.

78. Lindamood-Bell administered academic testing to Student on June 29, 2005, prior to the 2005 summer program, and August 31, 2005, after the summer program. A comparison of the test results<sup>13</sup> shows that Student did make increases on Lindamood-Bell's testing as follows:<sup>14</sup> 1) Peabody Picture Vocabulary Test – standard score 90/98, percentile 25th/45th, age equivalent 13.1/16.1; 2) Detroit Tests of Learning Aptitude 4, Word Opposites – standard score 5/8, percentile 5th /25th; 3) Detroit Tests of Learning Aptitude 2, Oral Directions – standard score 9/11, percentile 37th/63rd; 4) Woodcock Reading Mastery Test NU, Word Attack – standard score 85/99, percentile 16th/48th, grade level 5.0/9.3; 5) Slosson Oral Reading Test R – standard score 71/95, percentile 4th/38th, grade level 5.6/8.9; WRAT Spelling – standard score 79/84, percentile 8th /14th, grade level 5/6; 6) WRAT Arithmetic – standard score 79/93, percentile 8th/32nd, grade level 5/8; 7) Gray Oral Reading Test – grade level 6.6/9.9; 8) Gray Oral Reading Test 4, Rate – standard score 6/7, percentile 9th/16th, grade level 6.4/7.7; 9) Gray Oral Reading Test 4, Accuracy – standard score 6/7, percentile 9th/16th, grade level 5.4/7.2; 10) Gray Oral Reading Test 4, Fluency – standard score 4/6, percentile 2nd/9th, grade level 6.0/7.4; 11) Gray Oral Reading Test 4, Comprehension – standard score 8/9, percentile 25th/37th, grade level 8.7/10.2; 12) Lindamood Auditory Conceptualization Test (a test of phonemic awareness) – standard score 82/112, percentile 12th/79th, grade level 4.4/> 13.0.

79. Marianne Emigh (Emigh) was the Center Director for the Palos Verdes location of Lindamood-Bell. Emigh possessed a bachelor's degree in journalism and a master's degree in educational psychology but was not a California credentialed teacher.

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<sup>13</sup> Only test results that yielded standardized scores have been reported for comparison purposes.

<sup>14</sup> The June 29, 2005 test result will be given first, followed by the August 21, 2005 result. For example, the Peabody Picture Vocabulary Test Standard Score will be shown as 90/98.

She had worked for Lindamood-Bell beginning in June of 2003, and worked her way up to her current position. All of her post-college training was through Lindamood-Bell. Emigh testified that studies conducted by Lindamood-Bell confirmed that the tests administered to Student by Lindamood-Bell were not influenced by the “practice effect” and were valid even when given only two months apart. Emigh’s testimony on this point is accepted for purposes of this decision given that while theoretically, the practice effect might influence the results, there was no direct evidence to contradict her. The test results show that the Lindamood-Bell program provided an educational benefit to Student in reading.

80. Naudus taught Student’s English class during the 2005-2006 school year using the same techniques that he used to teach United States History. (See Finding 76.) The curriculum emphasized vocabulary and reading comprehension and in-class reading was done individually and silently by the Students. The class was not taught using a specific reading remediation program or system. Naudus implemented the language arts goals contained in the March 14, 2005 IEP.

81. An IEP team meeting was held on October 18, 2005, to discuss Mother’s request for continued Lindamood-Bell services because Lindamood-Bell testing showed that Student had made improvements after the summer of 2005 program.

82. On November 11, 2005, Student was offered small-group Lindamood-Bell services through the District’s SELPA, beginning in January of 2006. The SELPA Lindamood-Bell program generally ran for three hours per day, either from 8:30 a.m. to 11:30 a.m. or from 1:00 p.m. to 4:00 p.m. The Lindamood-Bell services that were provided by the SELPA were provided by Lindamood-Bell under contract to the SELPA. Student introduced evidence that Lindamood-Bell had studied its school-based, small-group services that it had implemented in a California SELPA and found them to be beneficial to Students. Mother rejected the Lindamood-Bell offer based on her perception that the SELPA group services were not as effective as individual instruction. In addition, Mother rejected the offer because Student would have to drop his theater arts electives; however

Mother testified at hearing that she would have had Student drop his electives if the offer had been for one-to-one services. As discussed above, Mother's concerns regarding the quality and effectiveness of the SELPA Lindamood-Bell services were not supported by Student's own evidence.

83. On November 11, 2005, Student was also offered one hour per day of one-to-one teaching by Naudus using the SRA Corrective Reading Program (SRA), a direct instruction system for teaching reading skills. Naudus was ready to start as soon as Mother agreed and would implement the program after school on school grounds or at a public library. Naudus provided Mother with information about the SRA program that he had gathered for a college paper, which included information about studies indicating that the SRA program had been effective in many settings. Naudus determined that SRA would have been helpful for Student, whose reading level was between the sixth and eighth grades, because SRA helped students advance up to the eighth grade level and Naudus had been successful applying the program with other special education students. Although the SRA materials were not on a twelfth grade interest level, in Naudus's experience, the materials still worked with older students because the success in reading was more reinforcing to the student than the content of the material. An older student with existing reading skills, like Student, would be able to progress quickly, perhaps doing as many as two lessons per hour, through the sections of the program that sought to correct improper decoding skills. In light of Naudus's experience working with SRA, he persuasively testified that Student could have made a gain in reading level of eight to ten months if the SRA program had been implemented beginning in November of 2005 until the end of the 2005-2006 school year. Mother rejected the SRA Corrective Reading Program because her home was being remodeled, however, this basis for rejecting the services is not persuasive because the tutoring was intended to occur either after school on the school campus, or at a public library.

84. On March 10, 2006, Student was again offered SRA after school, for one

hour per session, three days per week. The offer had been reduced because Naudus was no longer available five days per week. Mother did not accept the offer.

85. Dr. Eichenstein opined that Student did not make educational progress in reading because: 1) on her 2007 administration of the Passage Comprehension subtest of the WJIII, Student achieved a standard score of 72 (4.5 grade equivalent), whereas on Hofmeister's September 23, 2004 administration of the WJIII, Student achieved a standard score of 84 (5.1 grade equivalent); and 2) on her 2007 administration of the WIAT-2 spelling subtest, Student achieved a standard score of 76, whereas on Hofmeister's September 23, 2004 administration of the WJIII, Student achieved a standard score of 85 on the spelling subtest. No evidence was introduced that Dr. Eichenstein's results were inaccurate. Dr. Eichenstein's testing supports an inference that Student did not receive an educational benefit from having his reading needs addressed solely by his English SDC during the 2003-2004 school year. Dr. Eichenstein's opinion on this point is supported by Student's final proposed IEP dated May 18, 2006, which contains reading goals at the fifth and sixth grade level. (See Finding 71.)

86. District Director of Special Education Aaron Benton (Benton) agreed that intensive reading remediation is required when a student is reading two or more grade levels below their grade. Thus, in light of Student's WJ-III Reading Fluency and Broad Reading scores, Student's eligibility for special education being based on a discrepancy between his reading ability and his cognitive ability, and Student's difficulty passing the English- Language Arts CAHSEE, an intensive reading program should have been offered to Student during the 2003-2004 school year. As set forth above, Student was offered, and refused, intensive reading remediation programs at all other relevant times.

87. Emigh recommended that Student participate in a minimum of 240 hours of Lindamood-Bell programs for four hours per day to remediate Student's reading deficits because the Lindamood-Bell program improves phonemic awareness (the ability to perceive sounds within words), improves symbolic imagery (the brain's ability to imagine

letters associated with sounds) and improves concept imagery (the brain's ability to translate written language into images in the brain). Emigh compared Student's scores on testing conducted by Lindamood-Bell in 2005 and 2006, and concluded that a 240 hour program would provide Student with lasting, generalized gains in reading ability. Schnee recommended Lindamood- Bell instruction in the areas of decoding, symbol imagery and comprehension. Dr. Eichenstein agreed with these recommendations.

88. At the time of hearing, the District did not have a contract with Lindamood-Bell. The District currently has a comprehensive reading and writing program called SRA-REACH and other programs like "Read Naturally." However, according to Benton, the District's reading remediation programs are delivered to pupils during a class period of the school day, not as intensive remediation like the Lindamood-Bell program. Because Student has graduated, it would be impractical for Student to participate in the District's reading programs.

#### WRITTEN LANGUAGE GOALS AND SERVICES FROM OCTOBER 6, 2003 UNTIL GRADUATION

##### Unique Written Language Needs

89. Dr. Myatt authored a psychoeducational report on June 24, 1998, that noted that Student had difficulty with spelling based on the results of the Boder Test of Reading- Spelling Patterns. Specifically, Dr. Myatt noted that Student was in the "dysphonetic or mixed dyseidetic-dysphonetic spelling group," meaning that Student had trouble sounding out words for spelling along with some visual memory processing problems resulting in letter reversals.

90. Hofmeister's administration of the WJ-III to Student on March 11, 2003, yielded the following standard cluster scores related to writing: Broad Written Language – 92; Written Expression – 96. Student achieved the following standard scores on the writing subtests: Spelling – 86; Writing Fluency – 98; and Writing Samples – 92. From these test results, it can be inferred that Student did not have unique needs in written

language at the time.

91. The present levels of writing performance in Student's March 18, 2003 IEP (the operative IEP as of October 6, 2003) were: "[Student] is currently struggling in his ability to spell correctly. When given a vocabulary test [Student] seems to do well as a result of studying. When writing free hand [Student] seems to struggle in spelling and may always be in a rush. [Student] also seems to enjoy writing but will need to work on his expression." Hofmeister testified that at the time of this IEP, Student could not write a multiple paragraph essay with 100 percent accuracy.

92. At the March 15, 2004, IEP team meeting, Student's present level of performance in writing was listed as: "[Student] is currently rushing through his writing papers and turns in work that is both difficult to read and with words that are often spelled incorrectly. [Student] seems to hesitate in his willingness to take time to make his writing neat in all curriculum subjects."

93. On Hofmeister's administration of the WJ-III on September 23, 2004, Student achieved the following standard scores in written language: Broad Written Language – 85; Spelling – 85; Writing Fluency – 87; and Writing Samples –80. Student's scores had decreased in the area of written language since the March of 2003 WJ-III; however, as noted by Student's expert Dr. Eichenstein, Student's ADD could result in inconsistent test scores.

94. The March 14, 2005 annual IEP stated Student's present level of performance in writing as follows: "[Student] has slowed down slightly on his writing assignments and his handwriting seems to be improving. [Student's] spelling is also improved and is in the late devotional relations stage as measured in the Words Their Way program. [Student] struggles with harder prefixes, reduced and altered vowels, and bases, roots and derivatives."

95. Hofmeister's IEP progress reports showed that between November 15, 2004, and June of 2005, Student continued to make progress, but did not meet his writing goal.

Hofmeister specifically noted that Student needed to continue practicing his writing and not rush through assignments.

96. Student took the CAHSEE on March 15, 2005, and achieved a score of 347 in English-Language Arts, showing improvement over prior scores. A score of 350 was required to pass.

97. Naudus, who had taught Student for two years, credibly testified that Student's essay writing had improved between Student's junior year (the 2004-2005 school year), and the time of Student's final essay for senior English class.

98. Schnee administered the Test of Written Language – 3 (TOWL-3) to Student in January of 2006. Student achieved a "spontaneous writing quotient" standard score of 94, which according to Schnee's report is "average." Although this test result was not supplied to the District until hearing, it supports an inference that Student did not have unique needs in written language.

#### Written Language Goals

99. The writing goal in March 18, 2003 IEP (operative as of October 6, 2003) was "By March 17, 2004, when given a grade level core literature passage, [Student] will write an interpretive response with a hypothesis and supporting judgments with detailed examples and references to the text, other literary works and authors with 80% accuracy in 4 of 5 trials measured by portfolio assessment." This goal is a fourth grade "writing applications" goal, focusing on comprehension, as reflected in the California content standards, rather than a "writing strategies" goal, which would focus more on mechanics. This goal addressed Student's written language needs because it implicitly contains a writing mechanics goal for a multiple paragraph essay given that it requires Student to express and support a hypothesis.

100. The writing goal in the March 15, 2004 IEP was: "When given an employment form, [Student] will complete two legible job applications, proofreading and indicating errors by circling capitalization, punctuation and spelling errors. [Student] will

find 80% of errors and self-correct 80% of the errors found with 85% accuracy as measured by teacher-made performance-based assessment.” This goal was the equivalent of a fourth grade California content standard in grammar. Hofmeister testified that at the time, Student had yet to meet the fourth grade content standard for writing an essay with 100 percent accuracy. Although not addressing essay writing mechanics, this goal is appropriate in light of the present level of performance reflecting Student’s difficulties with grammar and accuracy and the fact that the English SDC curriculum contained writing and spelling exercises.

101. The following annual goal was developed for the March 14, 2005 IEP, “When given teacher-made examples of writing rubric, [Student] will use a writing rubric to self/peer-edit writing assignments from [sic] spelling, grammar and punctuation errors.” This goal was a seventh or eighth grade goal under the California content standards, was consistent with Student’s low average scores in writing on the September 2004 WJ-III, and addressed Student’s needs given that his present level of performance identified weaknesses in spelling.

102. The unimplemented May 18, 2006, IEP proposed a written language goal that “[Student] will produce a correctly indented, multiple paragraph composition that includes an introductory paragraph with a topic sentence, three supporting paragraphs with facts/details/explanations, and a concluding paragraph with a summary of key points, as well as will edit and revise for coherence, with 80% accuracy on 9 out of 10 occasions.” The IEP noted that the goal would be implemented by the special dayclass teacher and would enable Student to progress in the general curriculum, in particular, fourth grade writing standard 4.1. This goal was appropriate because although Student had made progress in writing, the goal reflected that at the time Student was not yet capable of independently drafting multiple paragraph essays.

#### Written Language Services

103. During all relevant school years, the only writing services Student received

was instruction in an English SDC and a United States History SDC during the 2004-2005 school year.

104. During the 2003-2004 school year, the core curriculum of the English SDC included instruction in spelling and writing exercises related to the material. By March of 2004, Hofmeister credibly observed that Student had made progress in writing because his written work contained more details. Based on Student's writing scores on the March 2003 WJ-III, which were generally average, with the exception of spelling, which was low average, and Student's behavior of rushing through assignments, it can be inferred that Student's difficulty with writing related in part to Student's ADD. Accordingly, Student's written language needs during the 2003-2004 school year were met by the English SDC and his progress demonstrates that he received some educational benefit during this school year.

105. During the 2004-2005 school year, the core curriculum of the English SDC again included instruction in spelling and writing exercises related to the material. As discussed in Finding 104, above, Hofmeister credibly testified that Student made progress, and Student's inconsistent WJ-III writing scores between March of 2003 and September of 2004 were plausibly explained as being related to Student's ADD, not a result of Student's writing skill deteriorating.

106. In Naudus's United States History class during the 2004-2005 school year, Student was required to do a writing assignment for each chapter. The final exam was a take-home exam in which Student had to give short answers and an essay on a person from history. Naudus went over proper paragraph writing in conjunction with the history lessons and saw improvement in Student's use of written language. Naudus's testimony demonstrates that despite a seeming decrease in standardized test scores, Student received some educational benefit in writing.

107. During the 2005-2006 school year, writing was part of the curriculum in Student's English SDC. The final assignment consisted of a writing project, and Naudus

devoted a one month block of class time to this assignment. Naudus taught writing by giving examples on the board to teach the concepts of introduction, body and conclusion. Students would do one or two examples, then be given feedback in class. Student's homework for the writing project was to do the research and prepare a "display board" for a presentation, whereas all writing was done in class so that Naudus was available to give immediate feedback. Ultimately, Student created a five paragraph essay and a display board, and gave a classroom presentation.

108. Dr. Eichenstein opined that Student did not make educational progress in written language because on her 2007 administration of the WIAT-2 subtests of Spelling and Written Expression, Student achieved standard scores of 76 (grade equivalent 4.8) and 75 (grade equivalent 3.2), respectively, whereas on Hofmeister's September 23, 2004 administration of the WJ-III Writing Samples subtest, Student achieved a standard score of 80 (grade equivalent 4.8). Dr. Eichenstein's opinion on this point was not persuasive because she acknowledged that ADD could result in inconsistent test scores, she did not establish that there was a direct correlation between WIAT-2 and WJ-III scores, and most importantly, Dr. Eichenstein did not test Student until nine months after graduation, during which time Student had not been using his writing skills.

#### SOCIAL/EMOTIONAL GOALS AND SERVICES FROM SEPTEMBER OF 2004 UNTIL GRADUATION

##### Unique Social/Emotional Needs

109. The March 18, 2003 IEP had identified Student as having social/emotional needs in the areas of "conflict resolution" and "social skills" based on Student demonstrating deficits in resolving problems with peers and social turn-taking with peers. As a result, this IEP offered group counseling services twice a month.

110. Alfonso provided Student with the counseling services set forth in the March 18, 2003 IEP and saw Student two to three times a month for group counseling sessions from March of 2003 through March of 2004. Over the course of the counseling

sessions, Student became more comfortable around his peers and improved his ability to voice his opinions and take turns during conversations. Based on her experience of counseling Student in a school setting, and her experience of having identified other students with low self-esteem issues that required counseling, Alfonso persuasively testified that Student did not have any remarkable self-esteem deficits, was emotionally like other boys his age, had displayed improvements in self-esteem throughout the time Alfonso knew him, and that Student did not need further regular counseling to be included in the March 15, 2004 IEP.

111. The March 15, 2004 IEP included "as needed" counseling, which was appropriate for Student in light of Alfonso's judgment that Student was capable of self-regulating his need for counseling. The IEP meeting notes reflect that "as needed" counseling was at Student's request, bolstering Alfonso's conclusion that Student was capable of regulating his need for counseling.

112. On September 29, 2004, Student's general education Theater Arts teacher reported to Hofmeister that Student "has made many friends and they all accept him" and that Student was not a behavior problem.

113. On October 4, 2004, Alfonso administered the Piers-Harris Children's Self-Concept Scale 2 (Piers-Harris) to Student, which showed an "average" level of self-esteem. The inconsistency index and response bias index (controls within the test that might indicate falsification of answers) were elevated, but according to Alfonso, not so elevated as to require that the results be viewed with caution. Alfonso plausibly explained that she had sufficient information from her observations of Student and the Piers-Harris, such that further social-emotional assessments were not necessary. Overall, Alfonso, who had counseled Student, perceived that Student was happy in school. Student's expert witness, Dr. Eichenstein, also noted the elevations in the inconsistency index and response bias index in the Piers-Harris, and opined that the test results were invalid; however, her testimony on this point was not persuasive because the examples she gave of

inconsistent answers were not those used by the test manufacturer to score the "inconsistency responding index."

114. Hofmeister, who had extensive contact with Student during the school day, credibly testified that during tenth grade (2003-2004) Student had achieved a sense of belonging and happiness from his involvement in theater activities and that by eleventh grade (2004-2005), Student was "more social" and did not have behavior problems. Hofmeister never received reports of poor behavior by Student, nor does she recall any worry about Student's self-esteem.

115. Naudus credibly testified at hearing that Student would volunteer to read out loud in United States History class during the 2004-2005 school year, an act inconsistent with self-esteem deficits related to academic performance.

116. Teacher reports prepared in preparation of the March 14, 2005 IEP all reported that Student did not exhibit behavior problems other than, consistent with Student's ADD, being "off task", and all reported that socially Student was doing well with peer relationships.

117. In light of Alfonso's knowledge of Student and experience as a school psychologist and counselor, and in light of what was known about Student at the time the March 15, 2004, and March 14, 2005 IEP's were drafted, the evidence does not support a finding that Student had social/emotional needs that were unaddressed by his operative IEP's during the 2004-2005 school year.

118. During the 2005-2006 school year, Student would volunteer to read aloud in Naudus's English SDC, an act inconsistent with self-image problems based on academic performance.

119. On progress reports dated January 9, 2006, none of Student's teachers reported behavior problems, and to the contrary, some teachers commented that Student was a "good worker" who "participates" or "completes virtually all assignments."

120. In teacher progress reports prepared prior to the May 18, 2006 IEP team

meeting, none of Student's teachers noted self-esteem issues or behavior problems. At most, Naudus noted that Student engaged in age-appropriate teasing with peers.

121. Mother perceived that while in high school, Student had low self-esteem based on Student making statements like "what's the use" or denying that he was "cute" when complimented by his Mother. However, Mother's testimony does not establish that Student had any social/emotional issue that interfered with his school performance during the relevant time period, particularly because Mother explained that her main concern in the social/emotional area was Student's jealous interactions with his younger brother who was intellectually gifted and athletic. Consistent with the above, Mother reported to Firemark in June of 2006 that Student "is popular with friends" and had a strained relationship with his brother.

122. Dr. Eichenstein opined that Student "presents as an at-risk teenager" based on what she described as "demoralization and self esteem issues due to chronic school failure." However, Dr. Eichenstein offered no explanation of how her observations and testing of Student in March, April and May of 2007 could provide any insight into Student during the time he was in high school, particularly when Dr. Eichenstein did not even meet Student until March 28, 2007. Dr. Eichenstein had no knowledge of any violent behavior by Student at school, and to the contrary, consistent with Mother's testimony, was aware that Student had acted out against his brother. Dr. Eichenstein's perception of "chronic school failure" is inconsistent with the evidence that Student passed his high school exit exams, graduated with a regular diploma and achieved good grades in theater arts general education electives. Dr. Eichenstein's opinions regarding Student's social/emotional status were also logically inconsistent. For example, Dr. Eichenstein was critical of Alfonso for not administering the long version of the Conners'-Wells rating scales, which contain questions about anxiety and emotional stability; yet Dr. Eichenstein herself opined that Student had social/emotional problems based on responses by Mother and Father to the short version of the Conners'. For these reasons, Dr.

Eichenstein's opinions regarding Alfonso's testing and Student's social/emotional status during high school were not persuasive.

#### Social/Emotional Goals

123. Findings 109 through 122, above, demonstrate that at no time during the 2004- 2005 and 2005-2006 school years did Student have unique social/emotional needs that required social/emotional goals.

#### Social/Emotional Services

124. Findings 109 through 122, above, demonstrate that at no time during the 2004- 2005 and 2005-2006 school years did Student have unique social/emotional needs that required related services.

#### TRANSITION PLANS FROM OCTOBER 6, 2003 UNTIL GRADUATION

125. Student contends that he was denied a FAPE because the District failed to provide an adequate transition plan and services. In general, prior to July 1, 2005, an IEP was required to include a statement of the transition services required by a student, beginning at age 14, to facilitate his or her transition from school. Transition services were defined as a coordinated set of activities that is designed with an outcome-oriented process that promotes movement from school to post-school activities and that could include instruction, related services, community experiences, the development of employment and when appropriate, the acquisition of daily living skills. After July 1, 2005, an IEP was required to include a statement of the transition services required by a student beginning at age 16. Transition services are now defined as a coordinated set of activities that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child to facilitate the movement from school to post-school activities and that could include instruction, related services, community experiences, the development of employment and when appropriate, the acquisition of

daily living skills.

126. The transition plan in the March 18, 2003 IEP, which was the operative IEP as of October 6, 2003, accurately indicated that at the time Student was interested in careers in culinary arts, acting and computer art and that full-time/part-time college was a desired post- school outcome. Student told Hofmeister his interests prior to the IEP team meeting. The transition plan was discussed at the IEP team meeting. District vocational assistant Joy Rosen attended the meeting. Student was given responsibility for visiting the career center to research careers he was interested in.

127. Hofmeister did not recall ever visiting the career center with Student. Student testified that he did not know that he was supposed to go to the career center to do his part for the transition plan; however, Student's testimony on this point was not credible, even assuming Hofmeister should have participated, given Student's demonstrated intelligence, his ability to express his desires, the fact that the directive to go to the career center was in writing, and Mother's involvement in the IEP process. No evidence was produced that Student was incapable of independently investigating career options.

128. During the 2003-2004 school year, Student worked three hours per week at a "Ruby's" restaurant for two months through the Workability program. The Workability program also helped Student get a part-time job at Sav-On pharmacy for a period of six months.

129. Consistent with Student's interest in theater arts, the Transition Plan in the March 15, 2004 IEP reflected that Student wanted to be an actor. Student and Hofmeister were designated as the responsible persons for the transition plan. Student was encouraged to continue to take classes, seek outside experience in this field, find resources in the community related to the field and to develop time management skills. The IEP team discussed the theater arts program at El Camino. "Full time/part time" college was listed under post-school education and training. Although Student testified

that no one talked to him about time management skills or what it would take to be an actor, his testimony was not persuasive because his demeanor and speech demonstrated that Student possessed sufficient intelligence to take responsibility for learning to balance school work and personal interests and to research his own interests.

130. Consistent with the March 15, 2004 IEP transition plan, Student had been further exploring his acting interests by participating in an after school improvisation club and by taking a dance class at a local theater.

131. On February 25, 2005, Student participated in a career evaluation that included taking the Wide Range Interest and Opinion Test (WRIOT). Student's stated interests were "actor, stage director." The evaluation noted that Student needed to improve his accuracy and thoroughness in completing work because Student would rush through tasks. While the test did indicate that Student might have aptitude for a career in a "protective service" field, as discussed in Finding 138, below, the District simply did not have sufficient information from Student or Mother that Student's interest in the armed forces should be included in the transition plan.

132. The Transition Plan in the March 14, 2005 annual IEP accurately listed Student's employment goal as "stage tech," and further noted that full-time/part-time college was contemplated. Student was required to contact the career center to identify further educational options. Other goals were that "[Student] will learn problem-solving skills as evidenced by categorizing and prioritizing realistic life outcomes / career path," and "[Student] will develop/increase job acquisition skills as evidenced by identifying employment options, complete a job application accurately and developing a resume. The special education department was required to coordinate with the career center to search for options for post-graduate studies. Student and his school advocate were the persons responsible for implementing the transition plan. Student conceded that he had signed up for an armed forces aptitude test through his high school's career office, yet failed to attend on the day the test was administered. This fact demonstrates that

Student was aware of the career office and capable of using it to investigate his career interests. Consistent with the transition plan, the Workability program helped Student with the skills required for job applications and showed him how to prepare a resume.

133. At the March 14, 2005 annual IEP team meeting, the team discussed Student's lack of progress in Algebra and its relationship to passing a community college entrance exam. The team discussed having Student take geometry rather than remedial "high school math" and also recommended that Student avail himself of free tutoring on campus. This fact demonstrates that Student's IEP team was concerned with ensuring that Student remained on track to achieve his transition goal of "full time/part time" college.

134. At the October 18, 2005 IEP team meeting regarding whether to continue Lindamood-Bell services, the team discussed the need for Student to investigate local community colleges like El Camino or Long Beach Community College, demonstrating that the transition plan was being implemented.

135. Consistent with the transition plan, on January 25, 2006, Student took the El Camino Arithmetic Test. Student achieved a score of 49 (63rd percentile) on the Elementary Algebra section and 24 (8th percentile) on the Arithmetic section. Student's score would require him to take "Basic Math" upon enrollment in El Camino, and would require approximately one and a half years of further course work to achieve college-level math proficiency. Mother discussed this information with District Program Specialist Dan Campbell at the May of 2006 IEP meeting. Mother also shared with the IEP team her understanding that remedial classes at El Camino would not result in college credit.

136. Consistent with the transition plan, on January 30, 2006, Student took the El Camino Reading and Writing Tests. Student achieved a score of 36 (7th percentile) on the "Reading Comprehension" test and a score of 58 (19th percentile) on the "Sentence Skills" test. Student's scores would require him to take "Introduction to Reading Skills" and "Introduction to Composing Process" upon enrollment for a period of one year. At the

May 18, 2006 IEP team meeting, Mother informed the team that Student would require remedial classes at El Camino.

137. Approximately 20 percent of students entering El Camino are placed in remedial reading and writing classes and approximately 50 percent of students entering El Camino are placed in remedial mathematics classes. This fact supports an inference that Student's high school education prepared him to enroll at El Camino.

138. Student and Mother testified that during high school, and at the time of hearing, Student was interested in a career in the armed forces. However, to the extent Student is contending that he was denied a FAPE because this goal was not included in his transition plans, this claim is not supported by the evidence. In particular, Naudus and Hofmeister, Student's high school "advocates" (a term used within District schools to describe faculty members responsible for assisting students with IEP's), had no recollection of Student ever expressing such an interest. The testimony of Naudus and Hofmeister is entitled to particular weight given their daily interaction with Student and their participation in interviewing Student for purposes of preparing transition plans. Mother candidly admitted that she never raised the armed forces issue at IEP meetings because she did not want Student to enter the armed forces.

139. The unimplemented May 18, 2006 IEP accurately listed Student's post-schools goals, which were obtained from Student by Naudus, as "possible automotive/bodywork classes at El Camino [Community College]. Possible stage tech classes at nearby community colleges." In recognition that Student would need better reading skills for community college, Naudus wrote in the transition plan that Student's transition services needs were "improve reading skills to enhance success at junior college" The individual transition plan noted that to achieve his goals Student needed to pass all remaining classes, "explore academic resources to assist in success in high school and community college," "explore employment resources . . . provided by the Employment Development Department and the Department of Vocational Rehabilitation"

and “explore independent living options.” Student and his parents were made responsible for these activities, with the exception of “explore employment resources,” which was also made the responsibility of the vocational counselor. For purposes of the transition plan, it was assumed that Student was capable of investigating independent living on his own, a fact born out by Student’s average intelligence, ability to successfully hold jobs, and Student’s demeanor at hearing.

140. According to Student, he was not counseled that he should continue to take math classes in order to retain and possess sufficient mathematics skills for college level work. This testimony is not persuasive given that Student’s progress in math and the requirements for El Camino were discussed at Student’s March 14, 2005 IEP team meeting. Student signed the IEP, indicating his attendance and approval. Moreover, Student demonstrated that he was aware that El Camino had a mathematics entrance exam by taking the test in January of 2006.

141. At hearing, when asked what he wanted to do with his life, Student’s first response was the armed forces. Consistent with his interest in the armed forces, Student has not taken any of the remedial classes recommended by El Camino and has not done anything to try to improve his scores on the El Camino entrance exams. These facts undermine Student’s contention that the execution of Student’s transition plan denied him a FAPE because it did not prepare him to enter community college without remedial classes.

142. At the time of hearing, Student had worked at Coldstone Creamery since July of 2006. Student also worked as a busboy at Patios restaurant. At the time of hearing, Student intended to quit this job because it conflicted with his schedule at Coldstone Creamery and had conflicted with the part-time non-academic classes he took at El Camino. It can be inferred that the transition plans were successful given that Student was attending community college part-time to follow his interest in stage craft and had employment.

143. To the extent Student contends that his transition plans should have contained more emphasis on independent living skills because he currently does not balance his checkbook or possess a driver's license, the evidence does not support such a claim. Student is capable of working and as discussed above, held two part-time jobs at the time of hearing, and his test scores demonstrate that he possesses math skills far beyond those required to balance a checkbook. Similarly, Student presented no plausible explanation or evidence for why he would need assistance from the District to obtain a driver's license considering that he demonstrated sufficient intelligence and reading ability to obtain a driver's license on his own.

#### PRESENT LEVELS OF PERFORMANCE AT THE MARCH 15, 2004 IEP TEAM MEETING

144. Student contends that his procedural rights under the IDEA were violated because his present levels of performance in some areas were inaccurately reported at the March 15, 2004 IEP team meeting. In general, procedural flaws result in a denial of FAPE if they result in the loss of educational opportunity, seriously infringe upon the parents' opportunity to participate in the IEP formulation process, or cause a deprivation of educational benefits.

#### Reading

145. Student's score of 66 on the "Broad Reading" cluster of the March of 2003 WJ-III was discussed at March 18, 2003 IEP team meeting, such that Mother was aware of it prior to the March 15, 2004 IEP team meeting.

146. The present levels of reading performance in the March 15, 2004 IEP state: "[Student] is currently showing an average reading level. [Student] is less hesitant to read among his classmates, yet he tends to rush through assignments." By "average," Hofmeister meant Student's performance compared to the rest of his English SDC, not Student's WJ-III Reading Fluency and Broad Reading scores which were far below average. There was no evidence that Hofmeister's definition of "average" was conveyed

to Mother.

147. Mother did not recall any discussion at the March 15, 2004 IEP meeting about whether Student had met his previous reading goals and nothing in the IEP documents reflects whether Student had achieved his prior goals. However, Hofmeister credibly testified at hearing that Student's current successes and performance in meeting his prior goals were discussed at the meeting. Hofmeister was credible on this point because the IEP meeting notes reflect the discussion of Student's current successes and that the "FastForWord" reading program was discussed, demonstrating that the IEP team had discussed whether Student needed reading assistance. Thus, although the definition of "average" set forth in the IEP may not have been expressly defined, the evidence supports a conclusion that the IEP team discussed that Student had reading deficits requiring remediation. Accordingly, no procedural defect regarding Student's present levels of performance in reading occurred.

#### Written Language

148. As to written language, the present levels of writing performance in the March 15, 2004 IEP state: "[Student is currently rushing through his writing papers and turns in work that is both difficult to read and with words that are often spelled incorrectly. [Student] seems to hesitate in his willingness to take time to make his writing neat in all curriculum subjects." No evidence was introduced that this statement was inaccurate.

149. Although at hearing, Mother did not recall any discussion at the March 15, 2004 IEP meeting about whether Student had met his previous writing goals, the IEP reflects that, consistent with the present level of performance in writing, Mother expressed her concerns regarding Student's spelling, use of appropriate language and rushing through assignments. In addition, the IEP team discussed the "Step into Writing" program at the meeting. Although the IEP document does not expressly state whether Student met his prior writing goals, the IEP team did discuss Student's successes and

needs. Accordingly, no procedural denial regarding Student's written language needs occurred.

#### Social/Emotional

150. As to social/emotional issues, Hofmeister gathered teacher input prior to the March 15, 2004 IEP team meeting. None of Student's teachers reported difficulties with peer interactions or behavior problems at school that would indicate social/emotional issues. No evidence was produced that this information was inaccurate.

151. DeMore testified at hearing that she recalled giving Student "pep talks" during 2003 because Student had emotional swings based on an awareness of his deficits. However, the March 15, 2004, IEP team cannot be faulted for not considering this information, as it was not brought to their attention at the time.

152. Prior to the IEP meeting, school psychologist Alfonso told Hofmeister that in her opinion, Student no longer required counseling services.

153. Mother did not recall any discussion at the March 15, 2004 IEP meeting about whether Student had achieved his social/emotional goals. However, her testimony on this point is contradicted by the IEP meeting notes that reflect a discussion of counseling services being provided "as needed per [Student's] request." The IEP meeting notes support the conclusion that Student's social/emotional needs at the time were discussed at the meeting. Accordingly, no procedural denial regarding social/emotional goals occurred.

#### OFFER OF LINDAMOOD-BELL SERVICES DURING THE 2004-2005 ESY

154. Student contends that he was denied a FAPE during the 2004-2005 ESY because the District unilaterally reduced the number of weeks of Lindamood-Bell services that were offered to Student in his IEP from eight weeks to six weeks. In general, the IDEA requires that a parent be provided with "written prior notice" when a school district proposes to change the provision of FAPE to a child.

155. The March 14, 2005 IEP was amended by an addendum dated April 18, 2005, to authorize Student to attend the Lindamood-Bell program for one-to-one instruction during ESY 2005. A section entitled "outcome of meeting" stated "Program specialist agrees to send [Student] to summer Lindamood-Bell program for 8 weeks;" however, the "8" had two lines through it and had been replaced by a "6" and the initials "AH." The "program recommendations" section of the addendum, which set forth the program/service being offered and the dates, duration and responsible agency, reflects that the Lindamood-Bell program was being offered "daily," starting June 28, 2005, and ending August 5, 2005, a period of six weeks. Other District IEP documents and addendums submitted as evidence in this matter consistently use the "program recommendations" section of the document to set forth the duration of services, supporting an inference that the "program recommendations" section was the controlling language of the IEP.

156. Mother signed the addendum on April 21, 2005, but did not review the addendum until sometime during the summer of 2005, when Student was attending the program. Mother's recollection was that District employee Tabitha Swigart had agreed to an eight-week program, however, this recollection was unsupported given that Mother could not recall whether on April 21, 2005, the date she signed the addendum, the "8" had been crossed out and replaced with a "6" in the "outcome of meeting" section.

157. Hofmeister generated the entire addendum, including the "outcome of meeting" and "program recommendations" sections at Swigart's request on either April 18, 2005, or April 19, 2005. At the time the addendum was written, Hofmeister crossed out the "8" in the "outcome of meeting" section and replaced it with a "6" at Swigart's direction and wrote her initials next to the change. According to Hofmeister, a new document was not generated in order to save paper. Hofmeister credibly testified that at no time would she alter a document after a parent had signed it.

158. District program specialist Daniel Campbell met with mother on October 18,

2005. At the time, Campbell investigated Mother's complaint that the summer program had been reduced from eight weeks to six weeks. Swigart told Campbell that the summer program that had been offered to Student was six weeks, an amount coinciding with the District ESY. Campbell's testimony on this point, although based in part on hearsay, is corroborated by the "program recommendations" section of the addendum that shows a six- week period.

159. The April 18, 2005 addendum was not altered after Mother signed it. Hofmeister and Campbell plausibly explained that the addendum at all times offered a six- week Lindamood-Bell program. Further, Lindamood-Bell understood the contract to provide for 120 hours of service, i.e., six weeks multiplied by Lindamood-Bell's usual 20 hours per week of instruction. Although Mother was sincere in her belief that the April 18, 2005 addendum had been altered, as discussed above, Mother's recollections and beliefs are not supported by the evidence.

#### STUDENT'S REQUESTED REMEDIES

160. Student requested in his closing brief that instead of educational therapy as a compensatory remedy, he be awarded two years tuition at Landmark College, a two-year college that specializes in educating persons with learning disabilities. Dr. Eichenstein recommended that Student attend a college like Landmark College, however, this recommendation is not persuasive because Dr. Eichenstein has never visited the facility, has no knowledge of the faculty credentials, and inserted the recommendation into her report at Mother's behest. Moreover, Dr. Eichenstein had no knowledge of the remedial classes offered at local community colleges like El Camino, no knowledge of the available accommodations for students with disabilities at local community colleges, no knowledge of Student's performance in a classroom setting and no knowledge of why Student had not enrolled in the remedial classes recommended by El Camino. In contrast, Alfonso and Naudus credibly testified based on their experience with Student that if he wanted to, he could succeed in a local community college without the support of note-

takers and counselors. Schnee also persuasively contradicted Dr. Eichenstein by opining that Student would be better served socially by attending college with typical peers.

161. At hearing, Student requested reimbursement for \$742 paid to DeMore for 14 speech/language sessions at the rate of \$52 per session between November 3, 2003, and May 24, 2004.

162. At hearing, Student requested reimbursement of \$6,912 paid to Shamrock Tutoring Services between October of 2003 and May of 2006. Mother did not testify with any specificity as to what subjects the tutoring related to, or what tutoring methodology was used, i.e., there was no testimony specifically describing how the tutoring related to a denial of FAPE. No proof of payment was provided, and the only proof of the amount billed to Mother was a letter from Shamrock Tutoring prepared over six months after Student graduated, which states that all data on actual tutoring sessions had been lost and at best the \$6,912 figure was an "approximation." Even if a denial of a FAPE is found, Student has failed to prove he is entitled to reimbursement of this expense.

## LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 534-537, 163 L.Ed.2d 387].)
2. As of October 6, 2006, the date the due process hearing request was filed in the instant case, the statute of limitations was three years from the time Student "knew or had reason to know of the facts underlying the basis for the request." (See former Ed. Code, § 56505, subd. (l).) Certain of the Student's allegations concern the period of time prior to the reauthorization of the IDEA, which became effective July 1, 2005. Thus, this case straddles both versions of the IDEA. To the extent that provisions of the former version of the IDEA differ from the reauthorized version, and such differences bear directly upon the determination of any issue in this Decision, they will be specifically noted. In most, if not all instances, however, the provisions of the former IDEA that bear directly upon the determination of the issues in this Decision were not amended by the

reauthorized IDEA.

3. Under the IDEA and state law, children with disabilities have the right to FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet State educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363(a).)

4. In *Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The intent of the IDEA was to "open the door of public education" to children with disabilities; it does not "guarantee any particular level of education once inside." (*Id.* at p. 192.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational

benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled student to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

5. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) When a student alleges a denial of FAPE based on the failure to implement an IEP, in order to prevail the student must prove that any failure to implement the IEP was "material," meaning that "the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 481 F.3d 770, 780.) "Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation." (*Ibid.*)

6. The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of a school district cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. Of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

7. An IEP is a written document detailing, in relevant part, the student's current levels of academic and functional performance, a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the

student and the date they are to begin, an explanation of the extent to which the child will not participate with nondisabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) The statement of measurable annual goals must be designed to “[m]eet the individual’s needs that result from the individual’s disability to enable the pupil to be involved in and make progress in the general curriculum” and “[m]eet each of the pupil’s other educational needs that result from the individual’s disability.” (Ed. Code, § 56345, subd. (a)(2)(A) & (B); see also 34 C.F.R. § 300.320(a).) The IEP must also contain a “description of the manner in which the progress of the pupil toward meeting the annual goals . . . will be measured . . . .” (Ed. Code, § 56345, subd. (a)(3).) When developing an IEP, the IEP team must consider the child’s strengths, the parent’s concerns, the results of recent assessments, and the academic, developmental and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).) Beginning July 1, 2005, an IEP was also required to include “a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child.” (20 U.S.C. § 1414(d)(1)(A)(IV).)

8. For each student, beginning with the first IEP to be in effect when the student is 16, the IEP must include as statement of the transition service needs of the student.<sup>15</sup> (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).) Prior to July 1, 2005, “transition services” were defined as “a coordinated set of activities for a student with a disability that”:

(A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education,

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<sup>15</sup> Prior to July 1, 2005, the IDEA required the IEP to address transition services at age 14, or younger, if the IEP team deemed it appropriate.

vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based upon the individual student's needs, taking into account the student's preferences and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(former 20 U.S.C. § 1401(30).)

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

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

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(20 U.S.C. § 1401(34).) The reauthorized IDEA also requires that the IEP include a statement of measurable goals based on transition assessments and an outline of the services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII).)

9. The failure to properly formulate a transition plan may be a procedural violation of the IDEA that warrants relief only upon a showing of a loss of educational opportunity or a denial of a FAPE. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276 [despite transition plans being a mandatory component of an IEP, notation in IEP that the transition plan would be “deferred” was procedural violation]; *A.S. v. Madison Metro School Dist.* (D. Wis. 2007) 477 F.Supp.2d 969, 978 [allegation of inadequate transition plan treated as procedural violation]; see also *Virginia S., et al. v. Dept. of Ed., State of Hawaii* (D.Hawaii, January 8 2007, Civ. No. 06-00128) 2007 U.S. Dist. Lexis 1518 [transition plan violated procedural requirements of IDEA, but was ultimately found to be harmless error, when it was not based on an interview with the student or parents, did not reference student’s interests, and which generically described post-secondary goals as graduation from high school and employment following post-secondary education].

10. A parent must be provided “written prior notice” when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3) & (c); Ed. Code, § 56500.4.)

11. As of July 1, 2005, the IDEA was expressly revised to clarify that a school district was not required to provide services that had been refused by a parent and a school district cannot be found to have denied a child FAPE for the failure to provide the

refused services. (20 U.S.C. § 1414(a)(1)(D)(ii)(III) & (III).)

12. The CAHSEE requirement has two goals: 1) “to ensure that students graduating from California high schools actually possessed the minimum proficiency in core academic skills needed to thrive in an economically competitive society” and 2) “to identify those students who lack the education needed to achieve even the minimal level of proficiency demanded by the exit exam, and to target them for remedial instruction.” (*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1470-1471 [setting forth legislative history of the CAHSEE in context of denying injunction against imposition of CAHSEE requirement for high school graduates in Spring of 2006]; see also Ed. Code, § 60850, subd. (a) [“the State Board of Education shall adopt a high school exit examination that is aligned with statewide academically rigorous content standards”] and Ed. Code, § 60851, subd. (f) [“Supplemental instruction shall be provided to any pupil who does not demonstrate sufficient progress toward passing the high school exit examination.”].) There is no limit on the number of times a student may take the CAHSEE. (See Ed. Code, § 60851, subd. (b).)

13. Generally, a student continues to be eligible to receive special education and related services until the student reaches the age of 22, unless the student has received a “regular high school diploma.” (Ed. Code, § 56026, subd. (c)(4); Ed Code, § 56026.1.)

14. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a free appropriate public education. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) 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 ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) 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.*) Relief may be provided even though the student is no longer eligible for special education services. (*Capistrano Unified School District v. Wartenburg* (9th Cir. 1995) 59 F.3d 884, 890; *Student W. v. Puyallup School Dist., supra*, 31 F.3d 1496.)

15. 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 school district failed to provide. (See *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [105 S.Ct. 1996, 85 L.Ed.2d 385].)

#### DETERMINATION OF ISSUES

1. *Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide IEP goals and adequate services to address Student's mathematics needs.*

Factual Findings 2, and 4 through 18, and Legal Conclusions 1, 2, 3, 4, 6, 7, and 12, demonstrate that Student was not denied a FAPE based on a failure to provide mathematics goals and services. At all times, standardized academic testing of Student has shown that he has average mathematics skills, his learning disability eligibility was not based on deficits in mathematics, he achieved a passing grade in regular education algebra, and he ultimately passed the CAHSEE. In the 2005-2006 school year, Student could have taken a math class, but did not, through no fault of the District. Accordingly, Student was not denied a FAPE because he failed to meet his burden of showing that he had unique needs that required IEP goals and specialized instruction and related services in the area of mathematics.

2. *Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide speech and language goals during the 2003- 2004 school year and failed to provide adequate services in all years.*

Factual Findings 22 through 49, and Legal Conclusions 1, 2, 3, 4, 6, 7, and 15, demonstrate that Student was not denied a FAPE based on a failure to provide IEP goals and services to address Student's speech and language needs. To the extent Student alleges that the operative IEP between October 6, 2003 and March 15, 2004 failed to contain a speech and language goal, this allegation of a procedural violation is barred by the three-year statute of limitations. Regardless, Student cannot demonstrate that the lack of a goal denied him a FAPE because he received the speech and language services in the IEP using a goal that remained appropriate. Student failed to meet his burden of demonstrating that during the relevant time period it would have been reasonable for his IEP to contain speech and language services because he failed to demonstrate that he had unique needs in this area. In particular, Student was discharged from private speech therapy by DeMore as of May of 2004, and DeMore's recommendations regarding the services Student should have received were not credible. Moreover, Student successfully participated in general education drama classes and would read aloud in his classes, demonstrating that he did not have speech and language needs. Because no denial of a FAPE in speech and language was found, Student is not entitled to reimbursement of fees paid to speech therapist DeMore.

3. *Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide IEP goals to address Student's reading needs in the 2003-2004 and 2004-2005 school years and failed to provide adequate services in all years.*

Factual Findings 50 through 55, 68 through 73, and 85 through 88, and Legal Conclusions 1, 2, 3, 4, 6, 7, and 14, demonstrate that Student was denied a FAPE from October 6, 2003, through the end of the 2003-2004 school year based on a failure to

provide appropriate IEP goals and services to address Student's reading needs. Although the District is now aware that Hofmeister had miscalculated Student's Broad Reading cluster score on the March 11, 2003 WJ-III, during this school year, the District assumed that the score was correct at the time, indicating a severe reading deficit. Accordingly, pursuant to *Adams v. State of Oregon, supra*, 195 F.3d at page 1149, ninth and tenth grade reading goals would not have been designed to meet Student's needs when it was assumed that Student had a severe reading deficit. Similarly, because Student was reading more than five grades below grade level and the entire basis of his special education eligibility was the severe discrepancy between reading ability and cognitive ability, an intensive reading remediation program should have been offered.

Factual Findings 50 through 63, 69 through 71, 74 through 79, 85 and 86, and Legal Conclusions 1, 3, 4, 6, 7, and 14, demonstrate that the reading goals for the 2004-2005 school year amounted to a denial of FAPE, but that Student was not denied a FAPE as to the offer of reading remediation services. First, as to goals, neither the March 15, 2004, nor the March 14, 2005 IEP contained goals that were designed to meet Student's needs that arose from his disability because the goals were many grade levels higher than would be appropriate and did not address reading fluency at all, which was thought to be Student's greatest area of need at the time. As to reading services, the District did offer Student reading services that were reasonably calculated to provide some educational benefit by offering Student the SELPA Lindamood-Bell program in October of 2004, which was refused by Mother, and by providing a Lindamood-Bell program to Student during the 2004-2005 ESY.

Factual Findings 64 through 67 and 81 through 84, and Legal Conclusions 1, 3, 4, 6, 7, 11, and 14, demonstrate that Student was not denied a FAPE during the 2005-2006 school year based on a failure to provide appropriate services to address Student's reading needs. Student was offered, but Mother refused, reading services in the SELPA Lindamood-Bell program and the SRA Corrective Reading program. The evidence

demonstrated that either program would have provided Student with some educational benefit and it has long been established that so long as a school district is providing a FAPE, the school district is not required to place a student in a program preferred by a parent, even if that program would result in greater educational benefit. (See *Gregory K. v. Longview School Dist.*, *supra*, 811 F.2d at p. 1314.)

4. *Was Student denied a FAPE from October 6, 2003, until he graduated in June of 2006, because the District failed to provide IEP goals to address Student's written language needs in the 2003-2004 and 2004-2005 school years and failed to provide adequate services in all years.*

Factual Findings 2, and 89 through 108, and Legal Conclusions 1, 2, 3, 4, 6, 7, and 12, demonstrate that Student was not denied a FAPE. During the period from October 6, 2003, through the end of the 2003-2004 school year, accurate standardized testing showed that Student's writing level was average, with some difficulty in spelling. Teacher reports from the time period support an inference that Student's ADD was a factor in his written language performance and spelling difficulties. Student's goals were appropriate to his writing needs at the time and teacher reports demonstrate that Student received some educational benefit from the English SDC writing curriculum. For the 2004-2005 school year, Student's goals aligned with California content standards and were designed to meet his needs in spelling, grammar and punctuation, which were weak areas for Student. Student received some educational benefit from instruction in essay writing mechanics that was delivered as part of the core curriculum in his English SDC and also in his United States History SDC. In the 2005-2006 school year, Student's written language needs were addressed by the core curriculum of his English SDC and Student received some educational benefit in writing mechanics as demonstrated by completing a final project that included a five paragraph essay.

5. *Was Student denied a FAPE from September of 2004 until he graduated in June of 2006, because the District failed to provide IEP goals and adequate services to*

*address Student's social/emotional needs.*

Factual Findings 109 through 124, and Legal Conclusions 1, 3, 4, 6, 7 and 14, demonstrate that Student was not denied a FAPE at any relevant time based on a failure to provide appropriate IEP goals and services to address Student's social/emotional needs. Student simply failed to meet his burden of demonstrating that he had unique needs in this area. All evidence from Student's teachers and the school psychologist demonstrated that Student was not exhibiting any signs of self-esteem problems or other emotional problems. To the contrary, Student was succeeding in his general education theater electives and was making friends, and showed no hesitancy to read aloud in class. Accordingly, Student failed to meet his burden of demonstrating that he was denied a FAPE.

6. *Was Student denied a FAPE from October 6, 2003 until he graduated in June of 2006, because the District failed to provide adequate transition plans.*

Factual Findings 125 through 143, and Legal Conclusions 1, 2, 3, 4, 5, 6, 8, 9, and 12, demonstrate that Student was not denied a FAPE. As to all time periods, Student did not meet his burden of showing that he required services related to independent living. From October 6, 2003, through the end of the 2003-2004 school year, Student's Transition Plan accurately reflected his interests and needs given that he was capable of investigating career options, and that the services provided to Student included training in employment and exposure to Student's area of interest in theater arts. As to the 2004-2005 school year, the evidence showed that Student's Transition Plan accurately reflected his interests and needs, Student's progress in mathematics was discussed at his annual IEP in relation to going to El Camino, Student did not require instruction or services for independent living, and Student demonstrated that he was following the transition plan by taking classes and participating in activities related to his interests. For the 2005-2006 school year, the evidence showed that Student's transition plan accurately reflected his interests and needs. Student's transition was discussed at an October 18, 2005 IEP team

meeting at which the team discussed Student's need to investigate local community colleges. Student followed the plan by taking the entrance exams at El Camino. In addition, Student was provided instruction in job applications and resume writing. Under these facts, it cannot be said that the transition plans and services provided to Student resulted in a denial of FAPE.

To the extent Student relies on the unpublished decision in *Elizabeth M. v. William S Hart Union High School Dist.* (C.D. Cal. September 24, 2003, Civ. No. 03-0877) 2003 U.S. Dist. Lexis 25786, \*11-\*12, that case is distinguishable and not controlling. First, *Elizabeth M.* involved a complete failure to implement the student's IEP goals in her areas of need over the course of years, demonstrating the required loss of educational opportunity and/or the denial of a FAPE which resulted in an award of compensatory education. More importantly, nothing in *Elizabeth M.*, or any other authority, imposes a duty upon school districts to provide anything more than "some educational benefit" as set forth by the Supreme Court in *Rowley*. In other words, no controlling authority stands for the proposition that because a transition plan identifies "full time/part time" college as a desired outcome, Student was entitled to be educated to a level at which he could succeed in community college without first taking remedial classes. Here, Student ultimately graduated from high school with a regular education diploma and passed the CAHSEE, which the State of California considers to be a rigorous exam of "core" academic skills. Further, unlike *Elizabeth M.*, Student was offered a FAPE in reading, his identified area of need, during the 2004-2005 and 2005-2006 school years. Accordingly, *Elizabeth M.* does not demonstrate that the transition plans in the instant case resulted in a denial of FAPE.

7. *Was Student denied a FAPE because the District failed to accurately report on Student's social/emotional, written language and reading needs at the March 15, 2004 IEP meeting.*

Factual Findings 145 through 153, and Legal Conclusions 1, 3, 4, 5, and 7,

demonstrate that Student was not procedurally denied a FAPE during this school year based on a failure to accurately report on Student's present level of performance in reading, written language and social/emotional goals at the March 15, 2004 IEP. In all areas, the evidence showed that Student's present levels of performance and needs were discussed at the meeting.

*8. Was Student denied a FAPE because the District unilaterally altered Student's IEP to reduce the number of hours of Lindamood-Bell services provided to Student during the 2005 extended school year (ESY).*

Factual Findings 155 through 159, and Legal Conclusions 1, 3, 4, 5, and 10, demonstrate that Student was not denied a FAPE during the 2004-2005 ESY because the District unilaterally altered his IEP. The evidence demonstrated that Student was offered a six-week Lindamood-Bell program, not an eight-week program, and that the IEP addendum was not changed after Mother signed her agreement to it. Accordingly, no denial of FAPE occurred.

## REMEDY

Applying Legal Conclusion 14, Student is entitled to compensatory education, consisting of 240 hours of Lindamood-Bell instruction in reading, for the denials of a FAPE resulting from the District's failure to offer appropriate reading goals and services during the 2003-2004 school year, and the failure to develop appropriate reading goals during the 2004- 2005 school year. Student's struggle to pass the CAHSEE and lack of progress in reading demonstrated by Student achieving a standard reading comprehension score of 72 on Dr. Eichenstein's 2007 administration of the WJ-III, show that Student still requires reading instruction. Examining the conduct of the parties, the District's own Director of Special Education acknowledged that intensive reading remediation should be offered to students who are reading at a level more than two grade levels below their grade, yet no intensive instruction was offered to Student. Despite Student's special education eligibility in the 2003-2004 school year being premised on a reading deficit, the

District failed to offer any additional reading program to Student other than a SDC, which conferred little educational benefit in independent reading. During the 2003-2004 school year, Student and his parents did nothing to impede the provision of FAPE. As to the inappropriate goals in 2004-2005, the District's goals were inconsistent with what the District's own testing was presumed to show about Student's reading level. Mother's rejection of the SELPA Lindamood-Bell services in the 2004-2005 and 2005-2006 school years, and the SRA program in the 2005- 2006 school year, which were reasonably calculated to provide some educational benefit, was in part a cause of Student's slow progress in reading skills and must be considered. The uncontroverted testimony of Lindamood-Bell's expert was that Student could make lasting gains with a minimum of 240 hours of Lindamood-Bell programs. The District presently does not offer any type of intensive reading remediation other than during single class periods in the school day and no evidence was offered of any reading remediation alternative other than Lindamood-Bell. Accordingly, Student is entitled to compensatory education in the amount of the minimum recommended Lindamood-Bell services.

Student is not entitled to a compensatory remedy of two years tuition at Landmark College. Dr. Eichenstein's recommendations regarding Landmark College were not credible. (See Finding 160.) Moreover, payment of tuition at a community college or any private institution is not an appropriate compensatory remedy given that the denial of FAPE was limited to reading services in Student's tenth grade year and in appropriate reading goals in two years. Factoring Student's conduct, Student has not enrolled in any academic classes since graduation, and at hearing, expressed a desire to join the armed forces, which infers a lack of commitment to college. Moreover, as discussed above, Mother's rejection of the District's offers of reading remediation that would have provided Student a FAPE limits the award of compensatory education to the services Student should have gotten in the 2003- 2004 school year. Accordingly, the requested remedy of two years tuition at Landmark College is denied.

## ORDER

1. Within 60 days of the date of this Decision, the District shall contract with Lindamood-Bell to provide Student with up to 240 hours of one-to-one educational therapy in the areas of decoding, symbol imagery and comprehension at a Lindamood-Bell facility.

2. Should Student not require or not use the 240 hours of services, the District shall only be required to pay for the number of hours actually used.

## 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. Here, Student was the prevailing party on the issues of District's failure to provide appropriate reading goals and services during the 2003-2004 school year, and the District's failure to develop appropriate reading goals during the 2004-2005 school year. The District prevailed on all remaining issues.

## 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. (Ed. Code, § 56505, subd. (k).)

DATED: August 7, 2007

A handwritten signature in black ink, appearing to read 'R. T. Breen', written over a horizontal line.

RICHARD T. BREEN

Administrative Law Judge

Office of Administrative Hearings Special

Education Division