

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

In the Matter of:

STUDENT,

Petitioner,

v.

NEW HAVEN UNIFIED SCHOOL

DISTRICT,

Respondent.

OAH CASE NO. N 2007070362

DECISION

Richard M. Clark, Administrative Law Judge (ALJ), Office of Administrative Hearings, Special Education Division, State of California, heard this matter from October 15 through 18, 2007, in Union City, California.

Christian Knox, attorney at law, represented Student. Student's mother (Mother) was present during the hearing. Student's father attended the first day of hearing.

Peter Sturges, attorney at law, represented New Haven Unified School District (District). Carol Rohde, Director of Special Education for the District, was present during the hearing.

The District filed its request for due process hearing on July 12, 2007. The matter was continued on August 22, 2007. Oral and documentary evidence were received during the hearing. The record remained open for the submission of written closing arguments by November 9, 2007, when the record was closed and the matter was submitted for decision.

In addition, the ALJ took under submission for ruling the District's objection to the admissibility of a private assessment report prepared by Susan McGrath and provided to

the District by Mother in April 2007 (Hearing Exhibit S-23).

ADMISSIBILITY OF MCGRATH REPORT

The District objected to the use and admission of a report offered into evidence by Student at hearing that was prepared by Susan McGrath, a Learning Specialist, who evaluated Student in January 2007. (Hearing Exhibit S-23.) Mother presented a copy of the report to the District in April 2007. Ms. McGrath utilized a variety of standardized testing instruments during the testing of Student, including the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) and Woodcock-Johnson Achievement Tests. According to the report, the WISC-IV was administered by Andrea Miller, a licensed psychologist. The District returned the report to Mother without consideration because the report contained IQ testing of Student, which the District believed violated the prohibition of using IQ testing to evaluate African-American children. The report did not purport to be an assessment for special education eligibility, but was meant to describe Student's current abilities and to identify Student's current educational needs.

Student contends that the District misapplied the *Larry P.*¹ holding and should have considered the private evaluation submitted by Mother as required by California statute and federal regulations. The District contends that the findings in the McGrath report were inextricably linked with IQ testing and that the report could not be considered for any purpose. The District also contended that the report provided was not final, but only a draft copy, since it was unsigned, and that it was following guidance from the California Department of Education (CDE) when it rejected the report.

In *Larry P. v. Riles, supra*, 495 F.Supp. 926, the District Court issued a permanent

¹ *Larry P. v. Riles* (N.D. Cal. 1979) 495 F.Supp.926, affd. in pt., revd. in pt., *Larry P. v. Riles* (9th Cir. 1986) 793 F.2d 969.

injunction preventing the use of IQ testing to evaluate African-American children for placement in classes for the Educable Mentally Retarded (EMR) or their substantial equivalents. In 1986, the injunction was modified by settlement to prevent the use of IQ tests to evaluate African-American children referred for any special education assessment, after California banned the EMR category of special education eligibility. (*Crawford v. Riles* (9th Cir. 1994) 37 F.3d 485, 486.)

In *Crawford, supra*, 37 F.3d at 486, the plaintiffs were learning disabled African-American children who were not part of the original *Larry P.* litigation, but sought to have IQ tests administered to them. The District Court found that they were not adequately represented in the *Larry P.* class action, and vacated the 1986 modification, leaving intact the original injunction. (*Id.* at 487.) The Ninth Circuit affirmed, finding that the original inquiry in *Larry P.* was into the disproportionate number of African-American children in EMR classes, and not the use of IQ tests generally. (*Id.* at 488.)

California law allows the parents to present reports to the Individualized Education Program (IEP) team for consideration. (Ed. Code, §§ 56341.1, subd. (f), 56381, subd. (b)(1).) In addition, the federal regulations say a district must consider the report if the report meets agency criteria. (34 C.F.R.300.502(c).) Here, the District argued that the report was a draft and included IQ testing, but there was no information provided that the report did not meet agency criteria. The statutes contain no prohibitions about the IEP team considering private assessments that contain IQ testing. Further, there are no prohibitions found within the *Larry P.* and *Crawford* decisions that would prevent the District from using the report to address the educational needs of a Student where eligibility is not an issue. Finally, the federal regulations permit the use of private assessments in due process hearings. (34 C.F.R. § 300.502(c).) Hearing Exhibit S-23 is hereby admitted into evidence.

ISSUES FOR HEARING

1. Did the District deny Student a free appropriate public education (FAPE) from

January 2006 through the end of the 2005-2006 school year by failing to: a) provide appropriate educational placement and supports; b) provide appropriate goals; c) provide appropriate assistive technology (AT) assessment and support; and d) identify the nature, frequency, and duration of AT services to be provided?

2. Did the District fail to appropriately assess Student in all areas of suspected disability during the 2006-2007 school year?

3. Did the District deny Student a FAPE during the 2006-2007 school year by failing to: a) consider a private evaluation obtained by her parents in January 2007; b) convene an individualized education program (IEP) meeting within 30 days of a written request; c) obtain parental participation at the December 8, 2006 and April 5, 2007 IEP meetings; d) give adequate notice for the December 8, 2006 IEP meeting; e) create and provide new goals in all areas of need at the annual IEP meeting; f) provide an appropriate placement; g) provide and implement appropriate AT equipment and services; h) provide extended school year (ESY) services; and i) provide an appropriate reading program?

4. Did the District fail to offer or provide Student a FAPE for the 2007-2008 school year?

RESOLUTION

As resolution, Student seeks: compensatory education in the form of educational therapy services from Lindamood Bell or Rascob Center; individual tutoring in math, reading and writing; the software, hardware, and training necessary for the use of the Kurzweil 3000 software program to complete homework; counseling in the form of a designated instruction and service (DIS); reimbursement for privately obtained tutoring services; and reimbursement for the private assessment completed by the Ann Martin Center.

FACTUAL FINDINGS

BACKGROUND

1. Student is 13 years old and resides in the District with her family. Student is currently privately placed at San Carlos Learning Center (San Carlos), where she is in the seventh grade. Student began attending San Carlos at the beginning of the 2007-2008 school year. She has been eligible for special education under the category of specific learning disability (SLD) since 2002. Student takes medication daily for Attention Deficit Hyperactivity Disorder (ADHD). Student's ethnicity is African American.

2. Student last attended a District school when she was in second grade. During the second grade, Student began attending a private placement at Redwood Christian Academy (Redwood) in Castro Valley, California. While she was at Redwood, Student had an individual service plan (ISP) that was administered by the District. In January 2006, when Student was in the fifth grade, she returned to District schools from Redwood and attended Delaine Eastin Elementary School (Eastin). During the 2006-2007 school year, she attended Alvarado Middle School (Alvarado), when she was in the sixth grade.

JANUARY 2006 TO END OF 2005-2006 SCHOOL YEAR

3. A district is required to provide a student an educational program that is reasonably calculated to provide her some educational benefit in the least restrictive environment (LRE).² A school district must provide a basic floor of opportunity that consists of access to specialized instruction and related services that are individually designed to provide an educational benefit to the student. Student contends that the program offer implemented for her during the 2005-2006 school year was not appropriate and, therefore, denied her a FAPE.

² LRE is not an issue for hearing.

UNIQUE NEEDS

4. A district is required to identify a student's unique educational needs, and to provide special education and related services designed to meet those needs.

5. Student's last triennial assessment occurred in March 2005 when she was in the fourth grade. Hui Stevens is a Resource teacher at Eastin and was Student's ISP case manager while she attended Redwood.³ Ms. Stevens conducted Student's March 2005 triennial assessment. Ms. Stevens gave Student that Wechsler Individual Achievement Test- Second Edition (WIAT-II) and noted that the results were valid. The WIAT-II revealed Student to have "borderline reading skills," math skills in the borderline to average range, and extremely low to low average skills in the area of written language. Student had average skills in the area of oral language.

6. Student began attending Eastin in January 2006, and her annual IEP meeting was held on January 24, 2006. Mother attended the meeting and consented to the IEP. At the meeting, the IEP team determined that Student had deficits in the areas of visual memory, visual figure and form constancy, and auditory memory, which affected her academic progress in all areas of the general education curriculum. Student had needs in the area of reading, writing and mathematics. Student was reading and comprehending at a beginning fourth grade level, and needed support in organization, sentence structure and spelling in her writing. In math, she demonstrated understanding of addition and subtraction skills, and was working on memorizing multiplication and division facts. The IEP team developed two reading goals, three writing goals, two math goals, four communication goals, three language goals, and one phonology goal. The team determined that Student did not have any need for AT, though in December 2005, while

³ Ms. Stevens has a Bachelor's degree in Liberal Studies and a Special Education credential. She has also taken coursework in the area of educational therapy and is well qualified for her position.

Student was at Redwood, the District provided her with an electronic spell checker.

7. Student contends that the District did not provide Student an appropriate educational placement and supports, appropriate goals, or appropriate AT, from January 2006 to the end of the 2005-2006 school year.

GOALS AND OBJECTIVES DESIGNED TO MEET UNIQUE NEEDS

8. An IEP is required to include a statement of the student's present levels of performance, measurable annual goals and a statement of how the child's progress toward the annual goals will be measured. A district is required to write measurable goals that address a student's unique needs. Student contends that the present levels of performance listed in her IEP goals were too vague and general to provide an accurate baseline from which to measure her progress and that her IEP did not include goals that met all areas of her needs.

9. Student's January 24, 2006 IEP included two reading goals. The first reading goal listed Student's baseline as, "[Student] can make limited predictions based on illustration support." The second reading listed the present level of performance/baseline as "[Student] can provide a simple retell." Both goals then listed specific, measurable criteria in which to evaluate her progress. The goals also included monitoring for short term instructional objectives in June and October 2006, and were to be implemented by the General Education and RSP teachers.

10. Student's January 24, 2006 IEP included three writing goals, all with the same present level of performance/baseline: "[Student] can write multiple sentences." Each goal then listed specific, measurable criteria in which to evaluate Student's progress. Each writing goal listed a different objective including use of a graphic organizer or outline to organize Student's pre-writing thoughts, writing a multiple paragraph essay, and editing and revising a draft essay. The goals included monitoring in June and October 2006, and were to be implemented by the General Education and RSP teachers.

11. The January 24, 2006 IEP contained two math goals, both with the same present level of performance/baseline: "[Student] can solve one step math problems." Each goal then listed specific, measurable criteria to evaluate Student's progress. Each math goal listed a different objective. The first addressed approaching the order of operation to solve multiple step math problems, and the second addressed multiple step math word problems. The goals included monitoring in June and October 2006, and were to be implemented by the General Education and RSP teachers.

12. The January 24, 2006 IEP contained four communication goals. The first communication goal listed the present level of performance/baseline as, "[Student] has difficulty following multi-step direction involving concepts of inclusion/exclusion, location, sequence and time," and addressed following multi-step directions. The second communication goal listed the present level of performance/baseline as, "[Student] has weak expressive language skills," and addressed correctly producing grammatically correct sentences. The third communication goal listed the present level of performance/baseline as, "[Student] has difficulty with phonological processes of: rhyming, three syllable deletion, initial phoneme substitution, phoneme segmentation, initial phoneme detection, and final phoneme substitutions," and addressed accurately performing target tasks in structured situations. The fourth communication goal listed the present level of performance/baseline as, "[Student] as (*sic*) weak auditory memory skills," and addressed utilizing strategies to process and retain auditory information in structured activities. Each goal then listed specific, measurable criteria in which to evaluate Student's progress. The goals included monitoring in June and November 2006, and would be implemented by the speech and language pathologist (SLP).

13. The IEP contained goals that were specific and addressed Student's areas of need. There were multiple goals in one subject area that focused attention on a deficit area. The goals were specific and measurable. The goals allowed Student to make educational progress, and by all accounts, Student made academic progress during the

2005-2006 school year. Further, the present levels of performance sufficiently listed Student's abilities and were adequate to provide a basis to measure her progress.

EDUCATIONAL PLACEMENT AND SUPPORT

14. A district is required to provide a placement that is designed to address the student's unique educational needs, and that is reasonably calculated to provide the student with educational benefit. In addition, an IEP is not judged in hindsight, but is evaluated in light of the information available at the time it was developed. Student contends that the District did not provide her an appropriate educational placement and supports from January 2006 to the end of the 2005-2006 school year.

15. The January 24, 2006 IEP provided a program for Student through June 15, 2006, the end of the regular 2005-2006 school year. The program called for 370 minutes, five times per week, in general education, Resource Specialist Program (RSP) assistance 40 minutes per session, five times per week, and speech and language assistance 40 minutes each session, two times per week, in the speech room. The IEP placed Student in the general education for 85 percent of the time and in special education for 15 percent.

16. The IEP also provided modifications and supports in the classroom including monitoring progress, coordinating services, and collaborating with the general education teacher and other specialists to meet Student's needs. The IEP also allowed Student thinking time prior to responding to questions; encouraged her to express her ideas verbally to help her organize her thoughts for writing; provided key vocabulary words prior to introducing new stories, which would support her comprehension; provided for model predicting when reading and retelling key facts and ideas; and provided for use of a spell checker as part of the editing process. For testing, the IEP recommended that she receive regular test administration with conditions and accommodations allowable to all students, but also that she be allowed to use small group and additional time and breaks if needed.

17. Sara Matley was Student's fifth grade general education teacher at Eastin

from January to June 2006. She has a degree in liberal studies and a multiple subject credential. Ms. Matley testified and established that she worked with Student on a daily basis in all subject areas, including language arts, reading, writing, vocabulary, math, science and social studies. She worked with her in whole group and small group settings depending upon Student's needs at the time. Ms. Matley used Leveled Reading and Houghton-Mifflin, both research-based reading programs. The programs worked on Student's decoding skills. Ms. Matley also worked with Student on core novels in a small group setting and consistently worked with Student in a small group for writing. A resource aide was present in the classroom every day. In addition, Ms. Matley's classroom had computers available for Student to use. Student worked on math in small groups and also worked with an aide. Ms. Matley taught social studies and science in a group setting, but approached teaching both subjects visually with lots of pictures. When Student entered Ms. Matley's class, she was reading below grade level, but when she left, she was reading at end of fourth, beginning of fifth grade level. Student had made progress, but was still reading below grade level. Ms. Matley also observed Student make progress in writing and she became more focused and organized. In math, Student made progress and acquired skills, but was not proficient in all areas. Student learned the social studies and science concepts. Ms. Matley observed Student to be happy and have friends; she was not depressed and was not a behavior problem.

18. Ms. Stevens worked as the RSP teacher for Student for the last half of the 2005-2006 school year. She administered Student's ISP at Redwood and was never told by staff or Student's teacher at Redwood that Student was at a seventh grade level in reading. Student was not at or near fifth grade level when she returned to Eastin. Ms. Stevens mainly provided "pull-out" RSP services to Student, working with her outside the classroom. When Ms. Stevens went on maternity leave for approximately seven weeks, the District hired a resource specialist to take her place.⁴ Ms. Stevens provided reading

⁴ While Ms. Stevens was on maternity leave, Mother worked as a substitute teacher

supports for Student herself and with the assistance of a paraprofessional. Ms. Stevens worked with Student on phonemics and phonology. She also worked with structure of homework because Student was busy after school with gymnastics. Ms. Stevens measured Student's progress using the "SRA," which is not a normed test, but measures comprehension, decoding, rate, and fluency. Ms. Stevens did not observe Student to be depressed.

19. Sharen Valles is a District speech and language pathologist who worked with Student from January 2006 to June 2006. Ms. Valles also performed part of Student's triennial assessment in March 2005 at Redwood. Ms. Valles talked to teachers at Redwood monthly to provide service and support at Redwood. Ms. Valles used the information from Redwood and goals from her state speech association to draft goals for Student, and believed her goals were measurable and appropriate. In addition, Ms. Valles worked with Student in the areas of auditory processing, phonemics, auditory discrimination, and sequencing. She also worked with Student on blending and decoding skills, word attack and site words. Ms. Valles worked on strategies to help Student seek assistance and ask questions if she needed assistance in class. Ms. Valles worked closely with the classroom teacher and observed Student make progress in the classroom, including participating more actively in class and being more confident. Ms. Valles also had Student act as a cross-age tutor, tutoring a kindergartner. Ms. Valles kept in contact with the speech and

at Eastin. On the day she worked at Eastin, Mother had a conversation with an RSP aide named Mrs. Kam, who stated she did not know Student. Mother believed she was supposed to be the RSP aide working with Student while the RSP teacher was on maternity leave and thought that the District had hired a part-time instructional aide to replace the RSP teacher, rather than a credentialed teacher. Mother filed a compliance complaint with CDE in April 2006, which ultimately found the District to be in compliance with the RSP services required by Student's IEP.

language therapist at Alvarado during 2006-2007 school year so she could continue to monitor Student's progress because she maintained an interest in her former students. She learned that Student was doing well at Alvarado.

20. Mother testified that Student was reading at seventh grade level when she arrived at the District in January 2006 based upon testing at Redwood. She also testified that during the 2005-2006 school year, Student had gymnastics after school a maximum of three days per week and the homework demands were "not bad." In May 2006, Mother received progress reports from Mrs. Matley that Student was not making progress and was receiving "twos" all across the report card, which meant Student was below basic levels. Student's STAR testing showed she was at a basic level in English, language arts, and science, but below basic in math.

21. Student testified at the hearing that she did three to four hours of gymnastics daily when she was in the District, but stopped doing gymnastics during the sixth grade because Mother wanted her to stop and she needed more time to work on her homework. Student contradicted her Mother on this point, but it was clear from all the testimony that Student had a busy extracurricular schedule during her fifth grade year. Student had limited recall about her fifth grade year, but did receive help with reading and writing in class and at RSP. She did not have a CD of her textbooks or audio assistance to listen to her textbooks. Student also stated that her homework took her between two and four hours per night, but sometimes longer when her medication wore off and it became harder for her to focus. Her brother and Mother would help her with her homework.

22. Karen Saucedo was the District's Director of Special Services during the 2005-2006 and 2006-2007 school years. The District agreed to an AT assessment in May 2006, but did not believe Student needed AT. Ms. Saucedo explained to Mother that STAR testing is not a good gauge of academic progress, and the testing results cannot be compared year to year. Ms. Saucedo stated that one needed to use a multitude of measures to determine how a student is doing. Student made educational progress based

upon her goals and objectives and teacher observations, even though she was not at grade level.

23. The overwhelming weight of the testimony demonstrates that the District provided appropriate placement and supports for Student from January 2006 to the end of the 2005-2006 school year. Student made educational progress during the school year. Student's teachers worked closely with Student on her educational program and she received the necessary support and assistance to help her access her education. Further, the services provided complied with the requirements of Student's IEP. To the extent that there is a conflict in the testimony between Student, Mother and the District representatives, the District witnesses were more persuasive, providing detailed testimony regarding their day to day interaction with Student and the progress she made during the school year.

ASSISTIVE TECHNOLOGY

24. A school district must provide any assistive technology (AT) device that is required to provide a FAPE to a child with a disability. An AT device is any item that is used to increase, maintain or improve the functional capabilities of a child with a disability. Student contends that she was not making educational progress and needed AT in the classroom and at home to access her education. Further, Student contends that because the June 2006 AT assessment recommended that she receive AT, it necessarily showed that Student needed AT throughout the 2005-2006 school year.

25. While Student was attending Redwood, the District denied a request by Mother for an AT software program that produced audio output for written text. The District thought that Student was making progress and that AT was not necessary for Student to access her education. In December 2005, the District provided Student an electronic speller for use at home, and Student used the electronic speller at home and school during the 2005- 2006 school year. Student does not currently use AT at San

Carlos.

26. On May 25, 2006, Ms. Stevens made a referral for an AT assessment. The District hired Augmentative Communications Technological Services (ACTS), an independent agency, to conduct the AT evaluation. Chris Toomey, an AT specialist who works for ACTS, conducted the AT assessment of Student and issued a report dated June 28, 2006, which was discussed at the IEP meeting on the same date.⁵ Ms. Toomey testified and established that AT is only a tool to support, not replace, the other services in place for Student, such as textbooks online. In her report, Ms. Toomey recommended use of the Kurzweil 3000 computer software program, which is a comprehensive reading, writing, and learning program that would address Student's needs. Ms. Toomey recommended that the software be used in conjunction with teaching strategies in order to continue Student's literacy development. The report also reflected that Student had a computer available to type assignments and was allowed to use a spell checker as part of the editing process. She also had access to a "Spelling Ace" for personal use to check spelling. The Kurzweil software would allow Student to read and listen to written material, provide support as Student produced written work, and provide assistance as Student continued to develop decoding and encoding skills and would be "of great benefit to her." The Kurzweil software would benefit Student in reading comprehension and retention, spelling, and word prediction, and would be used in conjunction with other strategies already in place to assist Student. Ms. Toomey explained at the June 28, 2006 IEP meeting that Student would not need software assistance in all classes and did not need the program at home.

⁵ Ms. Toomey had worked as a special education teacher for 25 years. She has a Bachelor's degree and holds special education and general education teaching credentials. She worked for 18 years in schools with students who used AT at all levels of disability. She currently works at Bridge School as a research associate and part time at ACTS, where she provides ongoing AT services

27. Mother believed that Student needed AT at home to assist her with her homework and to help her read more independently at home. At the June 2006 IEP, which was convened to discuss a recent AT assessment, Mother asked for AT software at home. The IEP Team determined that Student did not need AT in the home, but Mother disagreed. Mother consented to the IEP except for the District's refusal to provide AT in the home.

28. The AT assessment revealed that Student would benefit from the use of AT to better access her education. However, the evidence supports a finding that Student was making educational progress and accessing her educational program without the Kurzweil software. While her homework was difficult, both Mother and Student established that it was manageable during the fifth grade school year. Student did not require additional AT to access her education during the 2005-2006 school year.

2006-2007 SCHOOL

Year Failure to Assess

29. All referrals for special education and related services shall initiate the assessment process and must be documented. The District must deliver an assessment plan to Parents within 15 days of the assessment request. An IEP meeting must occur within 60 days of the receipt of parental consent for the assessment. Further, a reassessment of a student shall be conducted if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment. A district is required to assess a child in all areas related to a suspected disability. A reassessment of a student shall occur not more frequently than once a year, unless the parents and LEA agree otherwise, and shall occur at least once every three years, unless the parents and LEA agree in writing that it is not necessary. Student contends that the District should have reassessed her during the 2006-

2007 school year based upon her educational performance and Mother's written request for assessment dated January 12, 2007.

30. The District had completed a full triennial assessment of Student in March 2005, while she attended Redwood. In January 2006, Student's Lexile reading score showed she was reading at a fourth grade level. When Student completed the 2005-2006 school year, Ms. Matley' testing showed Student to be reading at the end of fourth grade, beginning of fifth grade, reading level. Student attended summer school over the summer 2006 and participated in math and language arts. When she returned to school in September 2006, her Lexile reading score had dropped to a third grade level. When she completed the 2006-2007 school year, her reading was again at a fifth grade reading level.

31. There was no evidence that Student's regression was anything other than that expected over a typical summer. The District witnesses testified and persuasively established that some loss of reading skills is expected over the summer. At the December 2006 IEP meeting, which was not attended by Mother, the District reviewed Student's educational progress, discussed the fact that she had met a number of her goals in math and reading, and discussed how Student was doing in her current placement. The District believed that Student was making adequate educational progress pursuant to her IEP and did not believe that a new assessment was warranted. Based upon the information the District had at the December 2006 IEP meeting, an assessment of Student was not required.

32. However, Mother believed Student was struggling at the start of the school year and was having difficulty with homework. Mother sent letters dated January 3 and 12, 2007, to Karen Saucedo, Director of Special Services for the District, requesting an assessment in all areas of suspected disability and stating that Mother would be seeking an independent educational evaluation (IEE) at public expense. In response, the District offered to conduct Student's triennial evaluation early, which was otherwise due in March 2008. Mother did not agree.

33. The District responded to Mother's written request for assessment by offering her an early triennial, but Mother did not agree. The District was required to provide an assessment plan within 15 days of the request for a special education assessment, but the District did not do so. Because the request was in writing, and Student's last assessment was nearly two years prior, the District was under an obligation to assess Student. The District did not develop an assessment plan and did not assess Student for special education services. The invitation by the District for an early triennial evaluation did not meet the District's obligation to assess.

FAPE

Unique needs

34. Student had the same unique needs in the 2006-2007 school year as those listed in Factual Findings 5 and 6, and addressed in the January 2006 IEP. In addition, at her annual IEP meeting held on January 17, 2007, the IEP team discussed that Student had deficits in the area of auditory memory, visual memory, visual figure and visual form consistency. Student had a third grade reading level according to her Lexile test when she returned from summer break. Her reading comprehension improved when given support for vocabulary, outline, and note taking, and when given graphic organizers. Student needed to continue to work on complex sentences, with more than one detail in a sentence. Student was able to work multiple step math problems, but needed to work on order of operation. Student had needs in area of pre-academic, academic and functional skills. She had communication and fine motor needs, as her handwriting had inconsistent spacing, orientation and neatness.⁶ Student also had a need for AT computer software to

⁶ The District conducted an occupational therapy assessment of Student in March 2007, which was discussed at an IEP meeting on April 5, 2007. The IEP team determined that Student did not need OT services. Mother did not attend the IEP meeting.

assist with reading and writing instruction in the school setting.

GOALS AND OBJECTIVES DESIGNED TO MEET UNIQUE NEEDS

35. At the June 28, 2006 IEP meeting, which was an addendum to the January 24, 2006 IEP meeting, the team determined that Student's goals were to continue from the January 24, 2006 IEP, and that she would receive the same supports, accommodations, and modifications.

36. At the December 8, 2006 IEP meeting, the IEP team determined that Student had met two reading goals, two goals in writing and both math goals from her January 2006 IEP. Student was expected to meet the communication goals by the annual review and was continuing to work on one writing goal. The IEP team did not develop new goals for Student because Mother was not present at the IEP meeting. The team decided to postpone creating new goals until the annual IEP in January 2007. The District testified that Student could work on California standards if there were no goals in place for Student.

37. At the January 17, 2007 IEP meeting, the District proposed two new goals each in the area of language arts and math. The language arts goals concerned spelling and grammatical errors in Student's writing. The math goals involved math operations using parentheses and math word problems involving addition or subtraction. The proposed goals were redrafted for the February 7, 2007 IEP and sent home with Mother for consideration. At the February 7, 2007 IEP, three communication goals were proposed. Mother initially consented to the February 7 IEP, but later rescinded her consent. Mother also proposed goals for Student that required Student to be at grade level standard by the end of the IEP period. The District did not believe that Mother's goals were appropriate for Student as they were not individualized for her. The math, language arts, and communication goals were revised and dated February 22, 2007, but there was no proposed reading goal.

38. The District drafted new goals, but did not address all areas of Student need.

Reading remained a specific area of deficit for Student, as she had begun the school year after regressing to a third grade reading level. However, the District failed to provide a goal to address that unique area of need from December 2006 until the end of the school year. While the other evidence shows that Student was receiving educational benefit and making progress in reading, it is unknown how much better her progress would have been had Student had an educational goal individualized for her unique needs. By failing to include a reading goal, the District denied Student a FAPE. The other goals were appropriate and addressed Student's educational needs.

EDUCATIONAL PLACEMENT AND SUPPORT

39. Student's placement from September 1, 2006 to January 24, 2007, was to be six periods per week of RSP, eight periods per day, five days per week, of general education, and speech and language assistance for 40 minutes, twice per week. At the February 7, 2007 IEP meeting, which was an addendum to the January 17, 2007 annual IEP meeting, the IEP team determined Student's placement from that day until January 18, 2008, to be in general education for seven periods per day, in RSP one period per day, and speech, two periods per week. For AT, Student had access to the Kurzweil 3000 computer software program at school and an electronic speller for personal use at home and in school. Student also had her Core textbooks on tape. Student's RSP teacher would work with the general education teacher to determine the best way to utilize her instruction.

40. As accommodation and modifications for Student, the IEP team recommended that Student be provided individual or small group instruction, clear step-by-step instruction with clarification of vocabulary, close access to visual models and examples, frequent checks for understanding and sufficient practice opportunities. Further, the RSP teacher would work with the general education teacher to determine the best way to handle instruction, using either pull-out or push-in methods.

41. Summer Belloni was Student's Core teacher during the 2006-2007 school

year. She has a multiple subject credential and taught Student in the areas of reading, language arts, and social studies. She established that Student demonstrated the most growth in writing and language arts during the year. At the start of the school year, Student could write a simple sentence, but struggled with capitalization, punctuation, spelling and organization. Student needed one-to-one support and guidance to assist with multiple paragraph essays. At the end of the year, she needed little assistance and had shown significant growth in essay writing. Student made progress in social studies and made significant progress in reading and understanding expository text. Student was not a behavior problem and acted like a normal sixth grader. Ms. Belloni provided Student preferential seating in class, always in the front row, and would switch seats if necessary to make sure she was. She also checked Student's work in class frequently and allowed her additional time on homework, usually another day, and made time to work with Student individually. Student was also offered Homework Club, but she did not access it on a regular basis. Student turned in late assignments, often two or three days late, and she was not penalized. Student often worked in a small group setting. Student also worked with the Resource teacher, who developed Student's goals, to determine the next logical step for Student.

42. Kenyetta Agregado was Student's math and science teacher during the 2006-2007 school year. She has a Bachelor's degree and is currently in the credential program. Ms. Agregado worked with Student in small group settings and would also use a buddy system. She worked with Student on her math goals even though the IEP was not signed. Student made progress on math goals. In math, Ms. Baeta testified she worked with Student and Student did very well. Student could start and finish math problems on her own, and Ms. Agregado believed that Student was capable when given the opportunity to be capable.

READING PROGRAM

43. Ms. Belloni worked closely with Student on reading. A Lexile reading report showed that Student entered Ms. Belloni's class reading at a third grade level in September 2006. Upon testing at end of year, she was at the fifth grade level. A reading specialist was in the classroom in February 2007 and tested Student's reading at a fourth grade level. Student struggled with reading from the textbook at the beginning of the school year. By the end of the year, Student was reading out loud in class and with a reading partner. Student could also work on the reading study guides; she was excited about her progress. Ms. Belloni used the Kurzweil software program with Student to organize, write and summarize the reading projects. The reading programs used were researched based and included SRA and Houghton-Mifflin. Ms. Belloni also used reciprocal teaching, in which she would ask Student questions about text for clarification, Frye's Phrases as a fluency program, and modified Student's Read Naturally program for fluency and comprehension. Ms. Belloni worked on various reading strategies with Student throughout the year, including the Interactive Reader, which is a workbook based upon the District textbook. The reading programs included phonemics and phonological processing. Student showed more fluency and greater comprehension at the end of the year. Ms. Baeta, Student's RSP teacher, also used the Read Naturally program and Frye's Phrases with Student, which both helped her with reading fluency.

44. Kristina Baeta was Student's RSP teacher during the 2006-2007 school year at Alvarado. She has a multiple subject credential and a learning handicap credential. Ms. Baeta has been teaching in District for 13 years. Ms. Baeta provided push-in and pull-out services for Student at least five periods per week. The student-to-teacher ratio was low, and varied depending upon the lesson. When using the Kurzweil software program, Ms. Baeta had no more than three students. When she worked with Student reading a novel, there were no more than eight students. When she worked with Student on math, there were no more than five students. She wrote and worked on goals for Student even though

Mother had not approved the goals, but she did not propose reading goals. Student used AT when appropriate—either the Kurzweil software program or the Franklin Speller—and could access all of her textbooks online, with the exception of the science text. Mother was provided the password to access the texts as well. The textbooks online allowed students to highlight text and have the text read out loud to them. Student did use the text online with other students and with Ms. Belloni when necessary. Student had less homework than other students. In reading, she could read a sixth grade core novel in a small group setting and could do a good “re-tell.” Student could write an essay two pages in length. She was reading more difficult books and her reading level improved. Ms. Baeta stated that phonemics were imbedded in all the curriculum. Student received 15 periods of RSP per week and often more. Student was given copies of texts on discs, Kurzweil software at school, which included a color scanner and printer in the CORE room only, and an electronic speller. Student was also given notes from another student to assist her. Student was happy and friendly, and had a group of friends.

45. In the sixth grade, Student remembered her teachers, but only some of the supports and services she received. She did go to Resource, but did not see an aide in the classroom. To get Resource assistance she had to go to the Resource room, where she worked on reading and homework, or would take a spelling test over if she had not received a good grade on it. She had a computer in the main classroom, but not in Resource and she did not have her own program. She did not utilize a computer in class for writing, as did the other students. Student stated that she did not have textbooks on CD or audiotape. She did not know what Kurzweil software was and stated that she did not have a computer that highlighted words and read them back. Student’s testimony is in conflict with other testimony and evidence in the case. To the extent that there is a conflict, the District witnesses were more credible and persuasive as they had a better recall of events during the school year.

46. The evidence demonstrates that Student entered the District during the

2005- 2006 school year reading at a third grade level, and ended that year reading at a fifth grade level. When Student began the 2006-2007 school year, she was again at a third grade reading level, and completed the year at a fifth grade reading level, even though she could read Core sixth grade novels in a small group setting. For basically two academic years, Student's reading performance had not changed. The lack of a reading goal highlighted that the District failed to meet Student's unique needs during the 2006-2007 school year in the area of reading and denied Student a FAPE. Had the District included a reading goal, Student's baseline could have been properly obtained and services could have been directed to assist in deficit areas and her progress could have been monitored more closely. Even though Student made progress and received educational benefit in the area of reading, the failure to include a reading that specifically addressed her area of need was not remedied by the program and services she received during the year.

47. Otherwise, the overwhelming weight of the testimony demonstrates that the District provided appropriate placement and supports for Student during the 2006-2007 school year. The District was operating off the last approved IEP from January and June 2006. Student's teachers worked closely with Student on her educational program and she received the necessary support and assistance to help her access her education. Further, the services provided complied with the requirements of Student's IEP.

PROCEDURAL ERRORS

48. Procedural errors during the IEP process may constitute a denial of FAPE when the procedural inadequacies impede the child's right to a FAPE, cause a deprivation of educational benefits, or significantly impede the parent's opportunity to participate in the decision making process regarding the provision of FAPE. Student contends that the District committed a series of procedural violations that denied her a FAPE.

PRIVATE ASSESSMENT

49. When a parent obtains an independent assessment at private expense and

shares that information with the District, the District is required to consider the results of the evaluation with respect to the provision of FAPE to the child, if the assessment meets the District's criteria for assessments. Student contends that the District should have considered the independent evaluation conducted by Susan McGrath and shared with the District in April 2007. The District contends that the evaluation was a draft evaluation and not signed by Ms. McGrath, and that the evaluation contained impermissible IQ testing of an African American student. Therefore, the evaluation could not be considered by the District.

50. Susan McGrath conducted a private assessment of Student in January 2007, while she worked at that the Ann Martin Center, a non-profit center that does academic assessment and educational therapy (tutoring) for students. Ms. McGrath has a bilingual and cross cultural teaching credential and has completed the coursework equivalent of a Master's degree in special education. She has been a Learning Specialist for eight years, and does one-to-one tutoring with students. At a school site, she consults with parents and teachers about how to work with students who have learning disabilities. In an interview prior to the evaluation, Mother told Ms. McGrath that Student did not receive services in public school, but did not tell her that Student had been tested by the public school. Mother did not provide work samples or any of the previous testing conducted on Student. Mother told Ms. McGrath that Student had ADHD and dyslexia. Andrea Miller, a licensed psychologist, administered the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV). Ms. McGrath gave Student a series of tests that included the Woodcock-Johnson III Test of Cognitive Abilities: Tests 1-18, Woodcock-Johnson III Tests of Achievement, 1-13, the Comprehensive Test of Phonological Processing, the Gray Oral Reading Tests, Fourth Edition, and the Beery-Buktenika Test of Visual-Motor Integration. Ms. McGrath's report is unsigned and undated. Ms. McGrath stated that her findings were based upon the totality of her testing and she could not separate out individual tests. Mother provided a copy of the report to the District in April 2007.

51. The testing by Susan McGrath showed Student to have a broad math score in the 11th percentile, or low average range. Her letter-word identification was in the low average range, passage comprehension was in the average range, and reading fluency was in the low average range. Her basic reading skills were in the very low range, and found that Student had poor word attack skills. Her broad math score was in the average range and her math calculation score was in the low average range. In broad written language, Student scored in the second percentile, with a spelling score in the .1 percentile and writing fluency in the 24th percentile. In broad oral language, Student scored in the 46th percentile. In academic applications, her overall score was in the 18th percentile, which was derived from her passage comprehension of 33-percent and her applied problem sub-tests where she scored in the seventh percentile. The report reflected Student had strengths in the area of oral language, was low average in broad reading, broad math, math calculation, and academic applications, but showed weaknesses in the area of basic reading skills and broad written language. Her math fluency scores were also very low. The report stated that the basic reading and broad written language scores were "discrepant for a learning disability in reading or more commonly called dyslexia." The report recommended educational therapy three to four times per week in the area of reading, writing and math fluency, use of AT, and other modifications in the classroom.

52. On April 4, 2007, Ms. Saucedo issued a procedure memo to District psychologists outlining the District's procedures for purging records of impermissible IQ testing. Based upon that policy, Ms. Saucedo returned the McGrath report to Mother on April 6, 2007, writing that it was an unsigned draft and included IQ testing information which the District could not consider. The District did not consider the McGrath report.

53. The April 4, 2007 memo from Ms. Saucedo stated the following:

The California Department of Education (CDE) has issued a Legal Advisory on October 11, 1994, banning the use of IQ tests when evaluating African American students. A brief summary follows: No

use of IQ tests when students have been referred for special education; The District should use alternative means of assessment; IQ tests may not be given, even when a parent requests it; When a school district receives records containing IQ scores, these scores should not become part of the student's current records and shall be forwarded to the parent; There are no related purposes for which IQ tests should be used; IQ should not be used for LD evaluations because they could later be used to determine if the student is mentally retarded; Prohibition on IQ applies even if the student is not in an SDC program. When students transfer into New Haven and IEP teams receive records that include psychological reports that include IQ scores and interpretations for African American students, it is important that District records are purged of these results. Please "white-out" all IQ scores and/or interpretations that result from the IQ measures used. Send the parents the attached cover letter, one copy of the original report, and one copy of the report with the IQ and interpretations removed. Make sure to include only the copy of the report with the IQ removed in the students special education file. If parents have questions or concerns that you are not able to address, please feel free to refer them to me.

54. The District was obligated to consider the report submitted by Mother and could have given it whatever weight they deemed it was entitled based upon the findings. Other than the policy statement developed by Ms. Saucedo, the District offered no other persuasive evidence about how the report did not meet agency criteria. Further, the District did not follow its own policy by redacting those portions it deemed inappropriate. The report was the most current assessment of Student's present abilities. Student's

educational program could have benefited from the current information and goals could have been developed that met deficit areas identified in the report. The District's outright refusal to consider the report denied Student a FAPE because it impeded her right to a FAPE and deprived her of any educational benefit that could have been derived from review of the report.

IEP WITHIN 30 DAYS OF REQUEST

55. An IEP team meeting must be held when the parent or teacher requests a meeting to develop, review, or revise the IEP. The meeting must be held within 30 days of the date the District receives the request for it. Student contends that the District did not hold an IEP within 30 days of Mother's October 15, 2006 written request for an IEP meeting.

56. Mother sent a written request to the District dated October 15, 2006, requesting an IEP meeting. The request was sent return receipt requested and Mother received notice that the District signed for the letter on October 18, 2006. In her letter Mother did not state a reason why she was requesting the meeting. Mother testified that she attended a parent-teacher conference during the first week of November, but Ms. Baeta did not mention the IEP request. Ms. Baeta testified that she discussed with Mother during the first week of November scheduling the IEP meeting during the first week of December.

57. On November 13, 2006, Ms. Baeta sent written notice to Mother scheduling an IEP meeting for November 28, 2006. Ms. Saucedo had also sent a letter to Mother dated November 16, 2006, telling Mother that Ms. Baeta would be scheduling an IEP meeting. Mother sent an email to the District on November 18, 2006, notifying the District that she was not available for an IEP meeting on November 28. The IEP meeting was eventually held on December 8, 2006. Mother did not attend.

58. The District failed to hold an IEP meeting within 30 days of the request from

Mother. There was insufficient information to show Mother waived her right to an IEP within 30 days. The failure to hold the IEP meeting within 30 days was a procedural violation, and as discussed below, amounted to a FAPE denial.

NOTICE OF IEP MEETINGS AND PARENT PARTICIPATION IN DECEMBER 8, 2006 AND APRIL 2007 IEPs

59. Parental participation in the IEP process is important because parents are an integral part of the IEP team. An IEP meeting may occur without parental participation if the District is unable to persuade the parents to attend the meeting. The District must schedule the meeting at a mutually agreeable time and place and with enough notice to allow parents the opportunity to attend. The notice must also indicate the purpose, time and location of the meeting. Student contends that the District did not schedule the December 2006 and April 2007 IEP meetings at a mutually agreeable time and place or with sufficient advance notice to allow her parents to attend.

60. The testimony and evidence revealed a complicated and difficult relationship between Mother and District staff. The IEP meetings were tense and difficult, which lead to Ms. Agregado bringing a union representative to one of the meetings. Mother complained that the District did not schedule enough time at IEP meetings to address parental concerns. Mother and the District routinely communicated via email and certified letter regarding Student.

DECEMBER 8, 2006 MEETING

61. Mother testified and established that she requested an IEP meeting in her October 15, 2006 letter to discuss how Student was doing and to see what could be done to make Student successful. Student was not doing well in school and was frustrated, and Mother wanted to meet with the District to facilitate Student's successful education.

62. Ms. Baeta sent a letter to Mother on November 13, 2006, scheduling the IEP meeting on November 28, 2006. Mother sent an email on Saturday, November 18, 2006,

indicating she was not available for an IEP meeting on November 28, 2006, because it did not provide her enough time to provide notice to her employer. She also requested an IEP meeting to start at 3:30 p.m. On November 28, 2006, Ms. Baeta sent an email to Mother acknowledging that Mother could not attend an IEP on November 28, but notifying Mother that the school day ended at 2:45 p.m., and that District staff could only be asked to attend during their duty time. On November 29, 2006, Ms. Baeta sent an email to Mother stating that the IEP was rescheduled to December 8, 2006 at 7:45 a.m. On November 30, 2006, Mother sent a responsive email saying that December 8 at 7:45 a.m. would not work, that the meeting must be after 3:30 p.m. because otherwise it would interfere with her employment. Mother's email also told the District that not meeting the needs of the parents when scheduling an IEP meeting is against the law. On December 4, Mother sent another email saying she could possibly attend an IEP as early as 2:30 with sufficient notice on any day other than December 5, 7, 11 or 13, but since she worked as a substitute teacher, it was difficult for her to attend earlier. On December 7, 2006, Mother sent an email saying she had not heard about the IEP meeting. Ms. Baeta sent an email to Mother on December 7, 2006, at 2:23 p.m. stating that "per our conversation," the IEP meeting was scheduled for December 8, 2006, at 2:30 p.m. Ms. Baeta made a handwritten note saying "called [MOTHER] on December 7, 2006 at 2:10 p.m. and scheduled the [December 8, 2006] per conversation." However, Mother never sent an email confirming that she would attend on December 8, 2006, at 2:30 p.m. On December 8, 2006, Mother sent Ms. Baeta a letter advising her that she felt intimidated and coerced and never agreed to the December 8, 2006 date.

63. Ms. Baeta does not recall whether she mailed a written notice of the December 8, 2006 IEP meeting, but it was her standard practice to do so. She believes she rescheduled the date with Mother, but does not have a copy of any notice for December 8. Mother did not appear at the IEP meeting on December 8, 2006, and the District went forward with the meeting without her.

64. As the facts described above show, the District did not adequately follow-up with Mother to seek her attendance at the December 2006 IEP meeting and did not schedule the meeting at a mutually agreeable time and place, or provide sufficient notice to allow Mother to attend. While the tension and animosity between the District and Mother was evident, the District was not absolved of its obligation to include Mother in the IEP process. A telephone call in the afternoon the day before a meeting is not sufficient notice to allow Mother to attend. The District's failure to include Mother in the IEP process denied Student a FAPE by significantly impeding Mother's participation in the decision making process regarding FAPE for her child. Mother had requested the IEP meeting and did not have an opportunity to inform the District about her concerns and the team lost the benefit of Mother's insight.

APRIL 5, 2007 IEP MEETING

65. In March 2007, an occupational therapy (OT) assessment of Student was conducted. On March 27, 2007, Ms. Baeta sent written notice to Mother advising her that an IEP meeting had been scheduled on April 5, 2007. Ms. Baeta said that it was her practice to send the letter by certified mail, but she does not recall receiving a return receipt. At that point in the year, everything was sent to Mother by certified mail. Ms. Baeta has no recollection of making a phone call to Mother about the April 2007 IEP meeting, and does not recall receiving any confirmation that Mother could attend the meeting. The April 2007 meeting was held without Mother. Ms. Baeta said that the meeting went forward without Mother because the District would be out of compliance if the IEP meeting were not held within a certain date of the OT assessment.

66. Mother testified and established that she did not receive notice of the April 2007 IEP meeting and had not seen a copy of the notice that was in evidence. Further, Mother would not have been able to attend the meeting because it was scheduled at 2:00 p.m. Mother had previously responded to all letters and notices from the District either by

letter or email and had previously told the District that the earliest she could attend an IEP meeting would be 2:30 p.m.

67. The District's record keeping regarding scheduling the IEP meetings and contact with Mother was lacking. While the District had copies of emails and letters, there was no tracking system in place that matched up a certified letter sent to Mother, with a return receipt showing she received the letter, or a log of phone calls to discuss the IEP. Further, handwritten notations on printed copies of emails are not clear and do not adequately detail the extent of any conversations by telephone with Mother, or the extent of the efforts to obtain her participation.

68. The District was obligated to confirm that Mother could attend the April 2007 IEP meeting by telephone or another manner to ensure that she would participate in the process. The evidence that the District gave notice to Mother of the April 2007 meeting is unpersuasive. The District did not provide sufficient notice of the April 2007 IEP meeting to Mother and did not make reasonable efforts to seek her attendance at the meeting. In addition, the District scheduled the meeting at a time that Mother had previously indicated she could not attend and that had been a source of dissension in December 2006. The District's failure to hold an IEP meeting within 30 days of a request, coupled with the failure of the District to appropriately schedule IEP meetings with proper notice to Mother, denied Mother the opportunity to engage in the decision making process regarding the provision of FAPE to her daughter.

ASSISTIVE TECHNOLOGY—EQUIPMENT AND SERVICES

69. As discussed in Factual Findings 24 to 28, Student required AT as part of IEP during the 2006-2007 school year when she was at school, but not at home. The District provided the necessary AT equipment as required by her IEP and, as stated in Factual Findings 41 to 44, the District appropriately utilized and implemented the AT in her Core and RSP classes.

EXTENDED SCHOOL YEAR SERVICES

70. Special education students are entitled to extended school year (ESY) services if interruption of the educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.

71. Andrea Lemos was the Assistant Principal at Alvarado when Student attended. She is a special education certificated teacher. Ms. Lemos established that the District offered summer school, rather than ESY, because Student was in general education, which could address any regression because summer school provided extra support to keep skills up in reading and math.

72. The District offered Student a summer school program at Barnard Middle School from July 2, 2007 to August 2, 2007, for three and a half hours per day. Student was properly placed in the general education classroom most of the time both before and after that summer. Student regressed over summer 2006 in her reading skills, but recouped those reading skills during the school year. There was no showing that Student required a particularized ESY program, as opposed to a summer school program.

2007-2008 SCHOOL YEAR

Unique Needs

73. Student's unique needs continued to be those described in Factual Findings 5, 6, and 34. The June 6, 2007 IEP, which was an addendum to the January 17, 2007 annual IEP, stated that Student exhibited a discrepancy between achievement and cognitive ability and deficits in visual memory, visual consistency, and auditory memory, as well as ADHD, which affected Student's academic progress in all areas of the general education curriculum. The District's offer was essentially the same offer of placement during the 2006-2007 school year.

GOALS, PLACEMENT AND SERVICES

74. Student was offered placement from June 6, 2007, to June 6, 2008, in the general education classroom for six hours and ten minutes, per day, five times per week, RSP for 50 minutes, six times per week; and speech and language assistance from January 18, 2007 to January 18, 2008, for 42 minutes, two times per week. In addition, the IEP team offered AT for a total of four hours from September 1, 2007 to June 6, 2008, to teach the new staff about the Kurzweil software program. Student was not offered ESY. There were no goals proposed for the 2007-2008 school year, except the math, language arts and communication goals previously proposed in February 2007.

75. At the June 6, 2007 IEP meeting, Student's progress on the January 17, 2007 goals was discussed. Those goals had not been approved by Mother, and there were no new goals proposed or discussed at the IEP. There were also no reading goals proposed. The District contends that the third communication goal contained in the June 6, 2007 IEP was a reading goal. The third communication goal listed the present level of performance as, "[Student] is 60-70% accurate in using phonological processes of rhyming, three syllable deletion, initial phoneme substitution, phoneme segmentation, initial phoneme deletions [and] final phoneme substitution." The measurable goal stated, "By _/08 [Student] will correctly perform target tasks with 80% accuracy during structured tasks and activities in 4 of 5 trials as measured and observed by specialist." The other two communication goals were to be implemented by a service provider, so it is reasonable to assume the third communication goal would be as well, and all previous reading goals had been implemented in the classroom by the teacher or RSP. The District did not propose a reading goal for Student.

76. The District received a letter from Mother dated June 6, 2007, giving the District 10 days' notice that Mother was removing Student from the District.

77. The District's offer of placement and services was essentially the same as that from the 2006-2007 school year and was designed to provide Student educational benefit

and meet Student's needs. However, the goals did not address all areas of need for Student, particularly in the area of reading. Accordingly, like its predecessor the previous school year, the offer from the District for the 2007-2008 school year did not provide Student a FAPE.

REMEDIES

78. Edith Gutierrez⁷ works at the Rascob Center, which provides comprehensive evaluations of students in all areas. The Rascob Center provides education therapy to students; most of the staff have at least a Master's degree. Ms. Gutierrez met Student at Rascob Center in July 2007. She did not evaluate Student. Ms. Gutierrez stated that the Rascob Center could provide educational therapy to Student for reading, decoding, fluency, and reading rate, and also in math and written expression. Most programs are 30 sessions, two times per week. The cost of such a program is \$2650.

79. Student was assessed by the Lindamood Bell program (LMB) in June 2007. LMB is a certified non-public agency that works with children and adults who have learning difficulties or disabilities, and uses research based programs to help remediate those deficits. Their testing used portions of standardized tests and revealed that Student had significant deficits in reading, math and spelling, as well as weaknesses in symbol imagery and concept imagery. In reading, the deficits were in the areas of rate, accuracy, fluency, and phonemic awareness. LMB recommended that Student receive the Seeing Stars program at LMB, which is directed at weak reading and symbol imagery skills. The program would help Student with site word, rate and accuracy in her reading. Seeing Stars

⁷ Ms. Gutierrez has a Bachelor of Science degree, a teaching credential, and a Level II mild to moderate special educational credential. She also has Master's degree in Education with concentration in special education, and a single subject English credential. She has worked in a middle school, and in day treatment at a non-public school.

was recommended for 200-300 hours, over 15 weeks. LMB thought that this program was the most essential program for Student. Because she also showed weaknesses in comprehension, LMB also recommended that Student receive the Visualizing and Verbalizing program, which is directed at use of concept imagery skills with reading. The Visualizing and Verbalizing program was recommended for 160-200 hours over 10 weeks. LMB also recommended On Cloud Nine, which is a program directed at math remediation. The cost of all programs is \$89 per hour. The sessions could occur on a school day or over the summer, but should be at least four hours per day.

80. Mother is seeking reimbursement in the amount of \$700 for the cost of Susan McGrath's assessment in January 2007. However, there was no evidence that the assessment meets the requirements for an IEE or was prepared after Mother disagreed with a District assessment. Mother also obtained private tutoring for Student from an individual named Crystal Brown in an amount that was not more than a "couple hundred bucks." There were no bills submitted and there was no persuasive testimony about the nature and type of tutoring. Mother also sought counseling services because Student was "embarrassed" about her inability to read. The District witnesses persuasively established that Student was not depressed, was not a behavior problem, and was otherwise a happy, well adjusted fifth and sixth grade student.

APPLICABLE LAW

BURDEN OF PROOF

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528], the party who filed the request for due process has the burden of persuasion at the due process hearing. Student filed for this due process hearing and bears the burden of persuasion.

GENERAL PRINCIPLES

2. Under the Individuals with Disabilities in Education Act (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(a)(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, subd. (a).)

3. There are two parts to the legal analysis of whether a school district complied with the IDEA. The first examines whether the district has complied with the procedures set forth in the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 206-07.) The second examines whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) The IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Id.* at p. 198.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201.)

4. Procedural errors in the IEP process do not automatically require a finding that a FAPE has been denied. Procedural violations constitute a denial of FAPE only if the procedural inadequacies impeded the child's right to a FAPE, caused a deprivation of educational benefits, or significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE. (20 U.S.C. § 1415(f)(3)(E); *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) Procedural errors during the IEP process are subject to a harmless error analysis.

(*M.L., et al., v. Federal Way School District* (9th Cir. 2004) 394 F.3d 634, 650, fn. 9 (lead opn. of Alarcon, J.).)

5. An IEP is evaluated in light of the information available at the time it was developed; it is not judged in hindsight. (*Adams, etc. v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)⁸ It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district, not the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) The evidence must establish an objective indication that the child is likely to make progress. The evidence of progress, or lack thereof, must be viewed in light of the limitations imposed by the child's disability. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d 119, 130.)

6. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 813.) A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Ibid.*)

⁸ Although Adams involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in Adams to other issues concerning an IEP. (*Christopher S. v. Stanislaus County Off. of Educ.* (9th Cir. 2004) 384 F.3d 1205, 1212.) Further, District Courts within the Ninth Circuit have adopted the Adams analysis in evaluating IEPs. (See, e.g., *Pitchford v. Salem-Keizer School Dist. No. 24J* (D.Ore. 2001) 155 F.Supp.2d 1213, 1236.)

ASSESSMENT⁹

7. A child must be assessed by a school district in all areas related to a suspected disability and no single procedure may be used as the sole criterion for determining whether the child has a disability or for determining an appropriate educational program for the child. (20 U.S.C. § 1414(a)(2), (3); 34 C.F.R. § 300.304; Ed. Code, § 56320, subd. (f).) A reassessment of a student shall occur if the local educational agency (LEA) determines that the student's educational or related services needs, including improved academic achievement and functional performance, warrant a reassessment, or if the parents or teacher request a reassessment. (Ed. Code, § 56381, subd. (a)(1).) A reassessment of a student shall occur not more frequently than once a year, unless the parents and LEA agree otherwise, and shall occur at least once every three years, unless the parents and LEA agree in writing that it is not necessary. (Ed. Code, § 56381, subd. (a)(2).) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, and follows the procedures set forth in the regulations.¹⁰ (34 C.F.R. § 300.502(b).)

8. A reassessment requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f).) To obtain consent, a school district must develop and propose a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (f).) If the parents do not consent to the plan, the district can conduct the reassessment only by showing at a due process hearing that it needs to reassess the

⁹ An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

¹⁰ If the parent seeks an IEE, the District must file for due process to show its evaluation was appropriate or ensure that the IEE is provided at public expense. The conditions for an IEE are not present in this matter.

student and is lawfully entitled to do so. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300(c)(2006); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f), 56501, subd. (a)(3), 56506, subd. (e).) The District must propose a written assessment plan and include notice of the procedural safeguards under IDEA and state law. (20 U.S.C. § 1414(a)(1)(D)(ii); Ed. Code, §§ 56321, 56329, 56381.)

THE IEP

9. An IEP must include a statement of the child's present levels of educational performance; a statement of measurable annual goals; the manner in which the student's progress toward meeting the goals will be measured; when periodic reports on the progress toward meeting the goals will be made; the special education and related services, supplementary aids and services, and modifications or supports to be provided; and the date the services begin and their anticipated frequency, location, and duration. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320(a); Ed. Code, § 56345, subd. (a).) An IEP that fails to contain the child's present levels of educational performance or objective evaluation criteria may be cured if the required information was known to the administrators and parents who participated fully in the development of the IEP. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23, supra*, 960 F.2d at pp.1484-1485; *Cleveland Heights-University Heights City School Dist. v. Boss* (6th Cir. 1998) 144 F.3d 391, 399.) A district must make a formal written offer in the IEP that clearly identifies the proposed program. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.)

10. An IEP meeting must be held when the parent or teacher requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).) Such a meeting shall be held within 30 days from the date of receipt of the parents' written request. (Ed. Code, § 56343.5.)

PARENTAL PARTICIPATION IN THE IEP

11. Parents have the right to participate in the development of the IEP for their

child and “to be informed of the availability under state and federal law of free appropriate public education and of all available alternative programs, both public and nonpublic.” (Ed. Code, § 56506, subd. (d).)

The importance of parental participation in the IEP process is evident. [Citations omitted] As the Supreme Court made clear in *Board of Education v. Rowley*: ‘It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard.’

(Shapiro v. Paradise Valley Unified School District (9th Cir. 2003) 317 F.3d 1072, 1077-1078, citing Board of Education v. Rowley, supra, at pp. 205-06 (internal citations omitted).)

12. Parents are essential members of the IEP team. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321 (a); Ed. Code, § 56341, subd. (b).) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place. (20 U.S.C. § 1414 (d)(1)(B)(i); 34 C.F.R. § 300.322(a).) The notice required for an IEP meeting must indicate the purpose, time, and location of the meeting and who will be in attendance, including the participation of other individuals on the IEP Team who have knowledge of or special expertise about the child. (34 C.F.R. § 300.322(b).) If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls. (34 C.F.R. § 300.322(c).) When conducting IEP team meetings the parent of a child with a disability and a public

agency may agree to use alternative means of meeting participation, such as video conferences and conference calls. (34 C.F.R. §§ 300.328, 300.501(c).)

13. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (34 C.F.R. §§ 300.322(d), 300.501(c).) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. (20 U.S.C. § 1414(e); 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b).)

PRIVATE EVALUATIONS

14. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation: (1) must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and (2) may be presented by any party as evidence at a hearing on a due process complaint regarding that child. (34 C.F.R. § 300.502(c); Ed. Code, §§ 56341.1, subd. (f), 56381, subd. (b)(1).)

ASSISTIVE TECHNOLOGY DEVICES

15. A school district must provide any AT device that is required to provide a FAPE to a child with a disability. (20 U.S.C. § 1401(1), (2); Ed. Code, § 56341.1, subd. (b)(5).)

An AT device is any item that is used to increase, maintain or improve the functional capabilities of a child with a disability. (20 U.S.C. § 1401(1).)

16. There is no express requirement that a school district perform an AT evaluation. However, AT devices or services may be required as part of the child's special education services, related services, or supplementary aid and services. (34 C.F.R. § 300.105.) A school district is required to use the necessary assessment tools to gather relevant functional and developmental information about the child to assist in determining the content of the child's IEP. (34 C.F.R. § 300.304(b).) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. (34 C.F.R. § 300.532(c)(6).) Therefore, in the proper circumstance, a school district is required to perform an evaluation of a child's need for AT devices or services.

EXTENDED SCHOOL YEAR

17. Extended school year services shall be provided to a student who has unique needs and requires special education and related services in excess of the regular academic year. (Cal. Code Regs., tit. 5, § 3043.) Extended school year services shall be provided to students who have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (*Ibid.*) An extended school year program shall be included in the IEP when the IEP team determines that the services are necessary in order to receive a FAPE. (34 C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3); Cal. Code Regs., tit. 5, § 3043, subd. (f).)

REIMBURSEMENT AND/OR COMPENSATORY EDUCATION

18. When a LEA fails to provide FAPE to a student with a disability, the student is

entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*School Committee of Burlington v. Department of Education* (1996) 471 U.S. 359, 369-371; 20 U.S.C. § 1415(i)(2)(C)(3).) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief that may be granted to remedy the denial of appropriate special education services and to help overcome lost educational opportunity. (*Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The right to compensatory education accrues when the district knows, or should know, that student is receiving an inappropriate education. Compensatory education does not, however, necessarily involve an obligation to provide day-for-day or session-for-session replacement for opportunity or time missed. (*Id.* at p. 1497). The purpose of compensatory education is to "ensure that the student is appropriately educated within the meaning of IDEA." (*Ibid.*) Both reimbursement and compensatory education issues are equitable remedies requiring a balancing of the behaviors of the parties. "Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Student W. v. Puyallup Sch. Dist., supra*, 31 F.3d at p. 1496.)

DID THE DISTRICT DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) FROM JANUARY 2006 THROUGH THE END OF THE 2005-2006 SCHOOL YEAR BY FAILING TO: A) PROVIDE APPROPRIATE EDUCATIONAL PLACEMENT AND SUPPORTS; B) PROVIDE APPROPRIATE GOALS; C) PROVIDE APPROPRIATE ASSISTIVE TECHNOLOGY (AT) ASSESSMENT AND SUPPORT; AND D) IDENTIFY THE NATURE, FREQUENCY, AND DURATION OF AT SERVICES TO BE PROVIDED?

19. As determined in Factual Findings 4 to 7 and 14 to 23, and Legal Conclusions 1 to 6, the District offered Student a placement, services, and supports that were designed to meet her unique needs and allowed her to make educational progress.

20. As determined in Factual Findings 8 to 13, and Legal Conclusion 9, the District provided Student with appropriate goals that were designed to meet her area of need. The goals contained were measurable and contained appropriate present levels of

performance from which to evaluate any progress.

21. As determined in Factual Findings 24 to 28, and Legal Conclusions 15 and 16, the District provided Student an appropriate AT assessment. Further, the District provided Student appropriate AT and adequately provided for its use in Student's IEP. The District also provided appropriate support for use of the Kurzweil 3000 computer software.

DID THE DISTRICT FAIL TO APPROPRIATELY ASSESS STUDENT IN ALL AREAS OF
SUSPECTED DISABILITY DURING THE 2006-2007 SCHOOL YEAR?

22. As determined in Factual Findings 29 to 31, and Legal Conclusions 7 and 8, the District was not required to assess Student during the 2006-2007 because of her educational progress. The District had completed a triennial assessment in March 2005 and had addressed Student's needs based upon that assessment. At the December 2006 IEP meeting, Student's current teachers provided detailed reports of Student's progress and program. The IEP team correctly concluded that Student was making educational progress and was able to access her education, even though Mother was not a part of the meeting. There was no information available to the IEP team that indicated that Student needed additional assessments in any area. In the area of reading specifically, Student was making educational progress. Any regression in her reading abilities over the summer was being appropriately remediated in her classes.

23. However, as determined in Factual Findings 32 to 33, and Legal Conclusion 7 and 8, in January 2006, Mother made a request in writing for a complete assessment in all areas of suspected disability. The request was nearly two years after Student's last assessment. The District did not produce a written assessment plan, but instead offered to conduct a triennial assessment early. The District was obligated to assess Student once Mother submitted a written request and should have submitted an assessment plan within 15 days of the request. The District therefore failed to assess Student in all areas of suspected disability.

DID THE DISTRICT DENY STUDENT A FAPE DURING THE 2006-2007 SCHOOL YEAR BY FAILING TO: A) CONSIDER A PRIVATE EVALUATION OBTAINED BY HER PARENTS IN JANUARY 2007; B) CONVENE AN INDIVIDUALIZED EDUCATION PROGRAM (IEP) MEETING WITHIN 30 DAYS OF A WRITTEN REQUEST; C) OBTAIN PARENTAL PARTICIPATION AT THE DECEMBER 8, 2006 AND APRIL 5, 2007 IEP MEETINGS; D) GIVE ADEQUATE NOTICE FOR THE DECEMBER 8, 2006 IEP MEETING; E) CREATE AND PROVIDE NEW GOALS IN ALL AREAS OF NEED AT THE ANNUAL IEP MEETING; F) PROVIDE AN APPROPRIATE PLACEMENT; G) PROVIDE AND IMPLEMENT APPROPRIATE AT EQUIPMENT AND SERVICES; H) PROVIDE EXTENDED SCHOOL YEAR (ESY) SERVICES; AND I) PROVIDE AN APPROPRIATE READING PROGRAM?

24. As determined in Factual Findings 55 to 58, and Legal Conclusions 9 and 10, the District denied Student a FAPE by failing to hold an IEP meeting within 30 days of the October 15, 2006 written request for a meeting sent by Mother. The IEP meeting was not held until December 8, 2006, without Mother in attendance. The failure to hold the IEP meeting was a procedural violation of the IDEA, that when viewed in light of additional procedural violations listed below, resulted in a denial of FAPE.

25. As determined in Factual Findings 49 to 54, and Legal Conclusion 14, the District failed to consider a private assessment provided by Mother to the District in April 2007. The District returned the assessment to Mother without consideration because it considered the report to be a draft, it was unsigned, and it contained impermissible IQ testing. The District was obligated by statute to consider the report prepared by Mother and could have considered the report and redacted any portions it believed violated District policy, but it did not do so. The report was the most current assessment available for Student and would have been crucial to understanding Student's needs and developing an appropriate program, including goals to meet those needs. The failure to consider the report caused a deprivation of education benefit to Student and significantly impeded Mother's ability to participate in the IEP to ensure a FAPE for her child.

26. As determined in Factual Findings 60 to 64, and Legal Conclusions 11 to 13, the District failed to schedule the December 8, 2006 IEP meeting at a mutually agreeable

time and place and failed to make sufficient efforts to insure Mother's attendance at that meeting. The District provided written notice of an IEP meeting on November 28, 2007, but Mother could not attend, so the meeting was rescheduled for December 8. The District and Mother engaged in extensive discussions about a new meeting date, but the December 8, 2006 remained disputed and was never established with sufficient specificity to provide notice of the meeting to Mother. Further, as determined in Factual Findings 65 to 68, the District failed to provide proper notice of the April 5, 2007 IEP meeting and failed to make adequate efforts to insure that Mother had notice of the meeting and would attend. Mother did not attend either meeting. The failure to provide proper notice and hold the meetings at a mutually agreeable time and place were a denial of FAPE because they significantly impeded Mother's ability to participate in the IEP process to ensure a FAPE for her child.

27. As determined in Factual Findings 35 to 38 and 46, and Legal Conclusion 9, the District did not create goals in all area of need during the 2006-2007 school year, specifically in the area of reading. Student met her reading goals in December 2006, but there were no new reading goals proposed for the remainder of the school year. Reading was a specific area of need for Student. The failure to include a reading goal denied Student a FAPE, particularly since for two school years, Student's reading level remained the same. In the 2005-2006 school year, Student completed the year reading at a beginning fifth grade level. She ended the 2006-2007 school year reading at the same level, though she was able to read a sixth grade novel in a small group setting. Had the District properly included a reading goal from December 8, 2006 to the end of the school year, Student's baseline would have been determined and her progress monitored more closely. The other goals written for Student were appropriate and were designed to meet her unique needs.

28. As determined in Factual Findings 69, and Legal Conclusions 15 and 16, the District provided Student with appropriate AT equipment and services, which were

appropriately implemented during the 2006-2007 school year

29. As determined in Factual Findings 70 to 72, and Legal Conclusions 17, the District offered Student an appropriate summer school program and was not obligated to offer her an ESY program. The summer school program met Student's needs, since she was a general education Student with RSP support.

30. As determined in Factual Findings 78 to 80, and Legal Conclusions 7 and 18, Student is not otherwise entitled to reimbursement, counseling services or private tutoring services.

31. As determined in Factual Findings 39 to 42, and Legal Conclusions 1 to 6, the District offered Student a placement, services, and supports that were designed to meet her unique needs and allowed her to make educational progress.

DID THE DISTRICT FAIL TO OFFER OR PROVIDE STUDENT A FAPE FOR THE 2007-2008 SCHOOL YEAR?

32. As determined in Factual Findings 73 to 77, and Legal Conclusions 1 to 6, the District's offer of placement and services for the 2007-2008 school year was essentially the same offer of placement and services made for the 2006-2007 school year. However, the District's offer did not include any reading goals, which was a specific area of need for Student. Accordingly, the offer of placement did not provide Student with a FAPE for the 2007-2008 school year.

33. As determined in Factual Finding 79, and Legal Conclusion 18, Student is entitled to compensatory education for the loss of educational benefit occasioned by the District's failure to ensure that she received a FAPE. The District did not offer Student appropriate reading goals from December 8, 2006 until the end of the school year. Student has significant reading deficits that were known to the District and should have been addressed through her IEP goals. Further, the District had access to a current, private assessment but refused to consider the report. LMB offers two reading programs that would meet Student's reading needs and help remediate the loss of educational

opportunity by failing to adequately address Student's reading needs during the school year. Accordingly, Student is entitled to the LMB program as compensatory education. As stated in Legal Conclusion 18, compensatory education is an equitable remedy that should consider the conduct of the parties and lost educational opportunity. The LMB Seeing Stars program was recommended for 200 to 300 hours, and was determined to be the most appropriate program for Student. However, Student received some educational benefit from reading interventions and programs implemented by the District during the school year that were otherwise appropriate and provided educational benefit to Student. Those programs mitigated the amount of lost educational opportunity. Accordingly, Student is entitled to 200 hours in the LMB Seeing Stars program.

ORDER

1. The District is immediately ordered to assess Student in all areas of suspected disabilities and hold an IEP meeting with adequate notice to Mother to review the results of assessment.
2. Within 30 days of the date of this Order, the District shall contract with LMB to provide Student with 200 hours of the Seeing Stars program at a LMB facility. The District shall coordinate the attendance at the program with the Parents. The District shall incur the cost of transportation to and from the program.
3. All other requests for relief and reimbursement are denied.

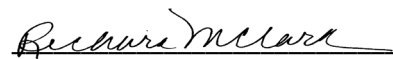
PREVAILING PARTY

The hearing decision shall indicate the extent to which each party has prevailed on each issue heard and decided. (Ed. Code, § 56507, subd. (d).) The District prevailed on Issue 1. The District and Student each partially prevailed in Issue 2. Student prevailed on the most significant issues litigated in Issues 3 and 4.

RIGHT TO APPEAL THIS DECISION

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

DATED: December 10, 2007

A handwritten signature in cursive script, reading "Richard M. Clark", is written over a horizontal line.

RICHARD M. CLARK

Administrative Law Judge

Special Education Division

Office of Administrative Hearings