

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

In the Matter of:

STUDENT,

Petitioner,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2007060040

DECISION

Administrative Law Judge Richard T. Breen, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter in Long Beach, California, on November 20, 21, 27, 28, 29, 30 and December 5, 10 and 14, 2007.

Tania L. Whiteleather, Attorney at Law, represented Student. Student's father (Father) attended the hearing on all days.

Debra K. Ferdman, Attorney at Law, represented Respondent, Long Beach Unified School District (District). District representative Douglas Siembieda attended the hearing on most days.

Student filed a Request for Due Process Hearing (Complaint) on May 31, 2007. A stipulated continuance was filed on July 11, 2007. At the hearing, the parties were granted permission to file written closing arguments. Upon receipt of written closing arguments on December 24, 2007, the matter was submitted and the record was closed.

ISSUES

1. Did the District fail to meet its “child find” obligation by not finding Student eligible for special education until the fall of 2006.

2. Did the District deny Student a free and appropriate public education (FAPE) because: a) the District failed to timely respond to parents’ request for an individualized education plan (IEP); b) the District failed to give parents timely notice of the procedural safeguards regarding special education; c) an assessment by the Los Angeles County Department of Mental Health (DMH) did not occur until December 1, 2006; and, d) the District failed to provide prior written notice when it refused to assess Student in 2005-2006 and the summer of 2006 and when it did not propose an educational placement for the fall of 2006.¹

3. Did the District deny Student a FAPE after he was identified as being eligible for special education in the fall of 2006 by failing to offer an appropriate placement and related services.

CONTENTIONS OF THE PARTIES²

Student contends that the District violated its child find obligation on or before April 11, 2006 (the date Father provided the District with a note stating Student was in

¹ In his closing brief, Student withdrew his allegation that parents were not given an opportunity to participate in the IEP process because they were not given information about the continuum of possible placements.

² The parties’ contentions are derived from the arguments in the closing briefs. Student’s closing brief did not make arguments regarding the other allegations in the Complaint; however, those allegations will still be addressed by this Decision.

counseling for depression), by not suspecting that Student might be eligible for special education based on attention deficit hyperactivity disorder (ADHD) or emotional disturbance. Student contends that as a result of the District's failure to identify him as eligible for special education at an earlier date, he should be reimbursed for medical expenses, hospitalizations, outpatient psychological therapy, substance abuse treatment, residential placement costs, family visitation at a residential placement and clothing purchased while Student was in a residential placement.

The District contends that it did not violate its child find obligation based on ADHD because Student failed to prove by a preponderance of the evidence that his education was affected by a diagnosis of ADHD and instead, the evidence showed that Student did not exhibit any behavior problems that would lead to a suspicion that special education was required for ADHD. Similarly, the District contends that Student's grades, school discipline and attendance record would not lead to a suspicion of emotional disturbance and that a letter provided to the District on April 11, 2006, stating that Student was being seen for depression would not have triggered the District's child find obligation because it did not state how Student's education was being impacted and contained insufficient information supporting a diagnosis of depression. The District also contends that its child find obligation was not in effect during the time that Student was enrolled in a program operated by another education agency. As to the other issues in the Complaint, the District contends that Student never requested an IEP prior to July or August of 2006 and that an assessment and IEP were ultimately conducted in a timely manner in September and November of 2006. The District contends that it had no duty to supply a notice of procedural safeguards during the summer of 2006 and that Student failed to prove a substantive denial of FAPE resulted from any procedural violation. The District also contends that Student failed to prove a procedural violation based on the timing of the DMH assessment because Student suffered no loss of educational benefit because of any

DMH delay. Finally, the District contends that Student was offered an appropriate placement and related services at the combined November 3, 2006 and December 21, 2006 IEP. As to remedies, the District contends: that tuition reimbursement should be denied because Student failed to give proper notice that he was unilaterally enrolling in a residential placement; that medical and hospital expense reimbursement should be denied because it was not proven to be educationally related; that expenses for family visits to the residential placement beyond those offered in Student's IEP should be denied because they were not necessary to provide a FAPE; that meal reimbursement should be denied or limited to that applicable to District personnel; and that Student failed to prove that the clothing expenses his parents incurred were required.

FACTUAL FINDINGS

BACKGROUND

1. Student is an 18-year-old male, who was determined to be eligible for special education under the category of emotional disturbance (ED) at an individualized education plan (IEP) team meeting on November 3, 2006.

2. At the time of hearing, the members of Student's immediate family all had histories of mental health treatment and/or substance abuse treatment. Father had a history of anxiety disorder, conduct disorder, bipolar disorder and major depression. Student's mother (Mother) had a history of dissociative identity disorder, which she described as having "different people" inside of her who sometimes took over for the "host." The "different people" inside Mother and the "host" had different recollections of events. Student's two teenage siblings both had a history of conduct disorder and substance abuse.

CHILD FIND AND FAPE

3. While in second grade in a district elementary school, Student was

recommended for the gifted and talented education (GATE) program. Student participated in a GATE class beginning in the third grade. Student's report cards show that he made satisfactory educational progress, but by the fifth grade Student was having difficulty following directions, working independently and completing homework. Student transferred to a District middle school beginning in sixth grade. According to Father, Student was no longer in a GATE class.

4. By eighth grade, the 2003-2004 school year, Student's report cards show that he was exhibiting disruptive behaviors in class, his grades were inconsistent and he was not completing homework. During the Spring semester, Student had five minor discipline reports for talking back to his English teacher; however, despite these incidents, Student received a grade of A in English for the semester. Student's eighth grade discipline report does not support an inference that Student's class disrupting behaviors were impacting his education.

5. In the fall of 2004, Student began ninth grade in a District high school. In February of 2005, Father informed school nurse Carol Howey that Student had been taking the prescription drug Concerta for ADHD. Father asked that Student be allowed to read independently in class if he had completed his work early. Howey provided the information from Father to Student's teachers and counselors. Howey did not do anything else regarding Student. Howey had not heard the term "child find" prior to the hearing.

6. During ninth grade, Student did not stand out academically or as a behavior problem to his science teacher David Stevens (Stevens), to his English teacher, Patricia Walker (Walker), or to his Architectural Design teacher Michael Caldwell (Caldwell). Stevens and Walker did not understand the term "child find." Caldwell knew that "child find" had to do with determining special education eligibility.

7. During the Fall semester of 2004, Student's discipline report reflected two incidents in a computer class: one for defying a teacher and another for "improper written

language / bragging about molesting young children.” Student’s report card for this period showed four grades of C, one D and one B.

8. Between March of 2005 and May of 2005, Student had eight discipline incidents in school: three incidents involving class disruption that resulted in on-campus suspension; one incident involving failing to serve detention that resulted in a period campus suspension; one truancy that resulted in detention and suspension; one truancy incident resulting in on campus suspension; one truancy incident resulting in off campus suspension at the Truancy Center; and one incident involving truancy and failure to follow class rules that resulted in one day in the Truancy Center. At the time, Father discussed Student’s absences with Student and high school administrator James Rivera (Rivera). Father had weekly contact with Rivera regarding Student. Student failed all of his second semester classes. Father had trouble getting Student to complete homework because the more demands Father made, the more defiant Student became.

9. Student attended the same District high school for tenth grade, beginning in the fall of the 2005-2006 school year. Between September 26, 2005 and October 18, 2005, Student’s had six discipline incidents: four minor incidents of failing to show identification that resulted in detention or on campus suspension; one incident of defiance of a teacher regarding homework that resulted in detention; and one incident of being truant from detention that resulted in one day at the Truancy Center. Student’s report cards from this period show that prior to October 4, 2005, he was on track to earn two B’s, two D’s and an F in Spanish.

10. Rivera was the high school administrator responsible for discipline during the 2004-2005 school year. Rivera explained that generally, the Truancy Center was used as a consequence for more serious discipline incidents, but that the severity of consequences for any individual incident was within the discretion of the administrator. Rivera did not have an independent recollection of Student. When asked to review Student’s discipline

record at hearing, Rivera opined that Student's conduct was not serious until approximately May of 2005, when Student's defiance and truancy merited the Truancy Center. Rivera would not have considered Student's discipline record for the fall of 2005 as being serious with the exception of the truancy during detention. Rivera was not familiar with the term "child find," but knew generally that special education referrals were coordinated by the school counselor. According to Rivera, referrals for special education were "not my job description."

11. On October 18, 2005, Nancy Boyd-Batstone (Boyd-Batstone), the high school counselor, completed a referral form to transfer Student out of the District high school to the Educational Partnership High School (EPHS). EPHS was a year-round self-study program that used the same curriculum content as District high schools. EPHS students worked on their own and then reported to a teacher for twice-weekly individual meetings.

12. Boyd-Batstone recalled that Student was not completing classwork and that Father reported that Student was bored in class. According to Boyd-Batstone, Father came up with the idea of placing Student at EPHS. According to Father, Boyd-Batstone recommended that Student transfer to EPHS because it had fewer students and teachers, and Student could learn at his own pace.

13. Boyd-Batstone was unfamiliar with the term "child find," but was generally aware that special education eligibility referral started with a student study team (SST). Boyd-Batstone sometimes initiated an SST for students whose academic and behavioral performance had changed.

14. The EPHS referral form indicated that Student was being referred because of "credit deficiency" and "special circumstances." Boyd-Batstone could not recall what the "special circumstances" were for Student or whether some additional documentation regarding "special circumstances" had been attached to the referral at the time. Generally the referral was sent to EPHS with a copy of the Student's transcript and discipline record.

15. Prior to enrollment at EPHS, Student and Father signed an "Independent Study Agreement." The agreement stated, in part: that Student could voluntarily return to his referring high school, but it would be best to wait until the beginning of a new semester to make this request; that failure to follow the discipline code and behavior guidelines could result in dismissal; that Student would do the work and attend meetings with his teacher; that if Student failed to complete four consecutive independent assignments during any period of 20 school days, the "Superintendent or designee shall conduct an evaluation to determine whether it is in my best interest to remain on independent study, and that a written record of any findings of any evaluation conducted pursuant to this policy shall be maintained in my permanent record;" and, that failure to complete the work or meet with the teacher could result in termination of independent study and "return to a traditional high school or other appropriate alternative."

16. Diane Paull (Paull) taught Student at EPHS. Paull was generally credible because she independently remembered details about Student's family such as Mother's former experience as a teacher and that Father was the primary caretaker in the home. Student attended EPHS from November 7, 2005 until April 7, 2006. During his first two months, Student did more work than was required. Between January 6, 2006 and February 6, 2006, Student did just slightly less work than was required. Between February 6, 2006 and March 6, 2006, Student completed just over half the required work. With Father's permission, Student declined to participate in the one traditional class that was offered at EPHS, a preparation review for the California High School Exit Exam (CAHSEE). Student ultimately passed the CAHSEE that was administered on February 7 and 8, 2006, with one of the best scores Paull had ever seen for an EPHS student. Other than parent conferences, Student attended only two meetings with Paull during March of 2006 and hardly completed any work for that month. During Student's enrollment at EPHS, Father did not closely oversee Student's completion of homework because when Father did it resulted in

conflict.

17. Student's enrollment card for EPHS indicated that he was taking Concerta and Father mentioned to Paull that Student had been diagnosed with ADHD. Father related Mother's mental illness history to Paull during teacher conferences and told Paull that Student had a chaotic home life. Eventually, Paull became aware from conferences with Student and Father that Student had a substance abuse problem. Paull arranged for another EPHS student who was in recovery to talk with Student. Father told Paull that Student would be seeking the help of outside therapists regarding Student's substance abuse.

18. Paull was not familiar with the terms "child find" or "seek and serve," but was aware that if she suspected special education eligibility that she should contact a special education teacher or counselor. Paull did not pass along information about Student's substance abuse to anyone within the District because substance abuse was common among EPHS students. Paull also did not think Student was emotionally disturbed because he had demonstrated in his first few months at EPHS that he was capable of doing the work.

19. On April 7, 2006, Paull filled out a "Student Withdrawal/Transfer Record" to "drop" Student from EPHS. A District "Dropout Fact Sheet" reflected a "leave date" for Student of April 7, 2006. However, the "Dropout Fact Sheet" had a check mark under the heading "STUDENT IS NOT A DROPOUT BECAUSE [emphasis in original]" indicating that "student is not attending due to illness (physical, mental, drug treatment, etc.)."

20. Licensed Clinical Social Worker Marc Fabiano (Fabiano) saw Student eight times from the beginning of April of 2006 through May 31, 2006. Fabiano had extensive experience in dealing with psychiatric emergencies. It enhanced Fabiano's credibility that he was not paid for his testimony. After Student's second therapy session, Fabiano wrote a note on April 11, 2006 at Father's request. Fabiano's note stated that Student was under

psychological treatment for “Depressive Disorder NOS [not otherwise specified]” and that Fabiano could be contacted for further information. Father provided the note to Paull, who passed it along to the EPHS counselor. If District Program Administrator Douglas Siembieda (Siembieda) had seen the Fabiano letter at the time Student was dropped from EPHS, Siembieda would have looked into Student’s background regarding why he was at EPHS and also would have sought additional information from parents or Fabiano such as a diagnostic report or treatment plan.

21. At the time, Fabiano thought that Student’s depression was significant and that Student’s substance abuse was driven by trying to modulate his mood. Fabiano also noted that Student had stopped identifying himself as a student and had a negative self-impression and a sense of hopelessness. Student stopped coming to therapy after Fabiano made demands on Student to change his behavior. Fabiano also concluded that family therapy would have been necessary because of Student’s conflict with his siblings and parents. None of this information was conveyed to the District at the time. Parents paid \$80 in insurance co-payments for Fabiano’s services.

22. There was contradictory evidence about the circumstances under which Student left EPHS. According to Paull: Student was “dropped” from EPHS because he was not attending and doing the work; Father had researched the idea of having Student receive a “medical drop” so that Student would no longer need to attend school; and Father subsequently produced a note from a therapist stating that Student had depression. According to Father: he had received a note from Paull saying that Student was going to be “dropped” from EPHS for poor performance; Paull had told Father that Student could re-enroll at the District high school in September; Fabiano’s note was not generated to excuse Student from school; and Father had told Paull about Student’s depression prior to her stating that Student would be “dropped” from EPHS. Despite Paull’s overall credibility, Father’s recollection is more persuasive because it is consistent with the EPHS

"Independent Study Agreement" rules regarding work completion and because Student was "dropped" from EPHS prior to Father providing Paull with the note from Fabiano.

23. On May 9, 24 and 31 of 2006, Student visited family physician Dr. Marvin Zamost, who ordered blood tests on May 24, 2006. According to Father, these medical visits were part of an attempt to have Student quit using illegal drugs. Parents paid co-pays totaling \$66.80.

24. On June 6, 2006, Student had a psychiatric evaluation by Dr. Thomas Firnberg for which parents paid \$200. No evidence was presented regarding the outcome of this evaluation.

25. On June 17, 2006, Student overdosed on Klonopin (a prescription drug for anxiety) that Student had taken from his Father's supply. Student was treated at Lakewood Regional Hospital and released. Parents paid insurance co-payments of \$104 for an ambulance, \$357 for Lakewood Regional Hospital, and \$41.50 for pathology services.

26. On June 18, 2006, Student "went berserk" looking for more of his Father's Klonopin in the home. Father called the police, who took Student into custody for psychiatric evaluation at College Hospital. While in the police car, Student ingested more Klonopin, resulting in a need for further medical treatment at Coast Plaza Doctor's Hospital. Student was hospitalized at College Hospital from June 18, 2006 through June 26, 2006. At College Hospital, Student was diagnosed as having Major Depression, rule out Bipolar Disorder and Polysubstance Abuse and Dependency. Parents paid the following insurance co-payments: \$1040 for College Hospital; \$119.65 for an ambulance; \$48 for an ambulance; \$322.64 for Coast Plaza Doctor's Hospital; and \$336.82 for various physicians.

27. Upon discharge from College Hospital, it was recommended that Student attend an inpatient drug rehabilitation program. Student began attending the Center for Discovery inpatient treatment program on June 26, 2007. Against medical advice, Student ran away from this program on July 8, 2006. While at Center for Discovery, Student's

education was provided by the Opportunities for Learning self-study program, a charter school outside of the District boundaries. Parents paid a co-payment of \$32.98 for this treatment. Parents also submitted as evidence a copy of a check for \$1980, dated June 26, 2006, and made out to Center for Discovery. However, there was no evidence that the \$1980 check was cancelled and no documentary evidence about what the payment was for. The \$1980 check is contradicted by the insurance company listing of co-payments, which shows that all but \$32.98 of the services billed at Center for Discovery were covered by insurance.

28. On July 14, 2006, Student attended one therapy session with Marc J. Liger, M.F.T. Therapy was not continued because Liger's office was too far from Student's home. Parents paid \$100 for this visit. No evidence was provided regarding the results of this visit.

29. After leaving the Center for Discovery, Student returned home, where he "bargained" with Mother and Father to go to outpatient drug treatment. Student received outpatient drug treatment at Twin Town from July 17, 2006 until July 31, 2006. Twin Town did not provide psychotherapy, but instead focused on addiction education and sobriety meetings. Student left the program because he had failed to maintain his sobriety. Student's parents paid an insurance co-payment of \$30 for this treatment. At hearing Father testified that an additional \$100 was paid; however, this testimony was not supported by the evidence because the supporting receipt was for a payment of \$200 for treatment for Student and a sibling, and the \$100 was not reflected on the insurance company listing of co-payments.

30. On July 26, 2006, Student saw Dr. Alan D. Vu for psychiatric medication management. Parents paid a \$10 insurance co-payment for this visit.

31. In late July or early August of 2006, Father called District Program Administrator Siembieda and requested an IEP team meeting. Father told Siembieda that Student had been in different treatment facilities for substance abuse and asked about

whether Student could return to his home school. Siembieda told Father to follow-up in September when Student's home school (the District high school that had referred Student to EPHS), resumed school in early September, just after Labor Day. According to Siembieda, assessments were conducted in the summer for schools on a year-round calendar, or, if the District had knowledge that a student was in an emergency, life-threatening condition. Siembieda persuasively testified that Father did not provide him with any information about hospitalizations, overdoses, or possible diagnoses for Student, such that he did not conclude at the time that Student's condition was life-threatening. Siembieda contacted District School Psychologist Jenny Yates (Yates) to inform her that Student would need to be assessed when school resumed in September. Siembieda did not send Father a copy of the procedural rights booklet at the time because nothing had been denied to Student.

32. Between July 26, 2006 and August 30, 2006, Student attended approximately eight therapy sessions with Amy Pesceone, M.F.T. (Pesceone), resulting in insurance co-payments of \$60. Pesceone's sessions with Student had the goal of creating a sobriety plan and having Student identify his feelings about his family and express those feelings appropriately. Pesceone concluded that Student needed more intensive psychiatric treatment than she could offer.

33. According to Father, on September 5, 2006, Student overdosed on heroin and was treated at Harbor General Hospital and released. This testimony is not supported by the evidence. No medical records from Harbor General were introduced, the Del Amo Hospital (Del Amo) records from September 9, 2006 do not mention an overdose, and Father's e-mails to Siembieda dated September 9 and 11, 2006 do not refer to an overdose but instead state that on September 7, 2006 Student was treated at Harbor General for hypoglycemia and released the same day. More importantly, unlike Student's other medical bill claims, which were supported by a statement from Student's health insurance

carrier showing a history of claims, amounts paid and required co-payments, there is no health insurance billing entry for services between August 16, 2006 and September 9, 2007.

34. Student was voluntarily admitted to Del Amo on September 9, 2007, for "evaluation of his mood state and self harm assaultive behavior." Student had been abusing illegal drugs, including heroin and methamphetamine, had cigarette burns on his arm, had a nearly-healed, self-branded "666" on his right arm, and had recently hit his brother and Father. Student was discharged on September 14, 2007, with a diagnosis of Bipolar Disorder and Polysubstance Abuse. The "aftercare instructions" in the discharge report included "Follow-up care: Follow-up monthly for psychiatry and weekly for therapy at Aspen Youth Care Residential Treatment Center" (Youthcare). According to Father, Student's stay at Del Amo was limited by insurance coverage. Dr. Madeleine Valencerina (Dr. Valencerina) had recommended to Father that Student be discharged to a facility like Youthcare. Youthcare was the only facility that would accept Student. Mother and Father did not incur out-of-pocket expenses related to Student's treatment at Del Amo.

35. On September 8, 2006, Father sent an e-mail to Siembieda stating, in relevant part, "I need your help in getting the IEP for my son he has a chronic drug problem and emotional issues." Father also stated that Student was being admitted to Del Amo Hospital to stabilize him and that prior therapists had recommended residential treatment. Siembieda responded by expressing his concern and asking Father where Student was currently enrolled. Father replied to Siembied to explain that Student had been "dismissed" by EPHS in April, had been unstable over the summer, and that Twin Town, the Center for Discovery and Pesceone had recommended residential treatment. Father's e-mails did not contain an express statement that Father intended to enroll Student at Youthcare within ten days.

36. On September 11, 2006, Father e-mailed Siembieda to request information

about residential treatment programs. On September 12, 2006, Father sent Siembieda an e-mail expressing frustration and reminding Siembieda that they had talked on the telephone in late July or early August of 2006.

37. On September 13, 2006, school psychologist Yates started an assessment of Student by contacting Father. Father told Yates that Student was going to be unilaterally placed at Youthcare as soon as Student was discharged from Del Amo. Father signed a referral to DMH for a mental health assessment of Student.³ Yates provided Father with a copy of the procedural rights handbook and conducted her assessment of Student at Del Amo on the same day.

38. Yates concluded that Student met the eligibility criteria for special education under the category of emotional disturbance because Student's educational history revealed that he exhibited inappropriate types of behaviors or feelings under normal circumstances in several situations and exhibited a general pervasive mood of unhappiness. Although Yates noted that it was difficult to determine whether Student's emotional difficulties or drug abuse led to his deficits in academic performance, Yates accepted Dr. Valencerina's conclusion that Student's bipolar disorder was driving Student's substance abuse.

39. On September 15, 2006, Yates sent a letter to DMH requesting that DMH conduct its assessment jointly with her "due to the serious nature of this student's condition." DMH mistakenly rejected Yates's referral on the grounds that the referral

³ In California, mental health assessments and mental health services provided as a related service are the joint responsibility of the State Secretary of Public Instruction and the State Secretary of Health and Welfare. Accordingly, mental health assessments and services are provided through community mental health services. (See 20 U.S.C. § 1412(a)(12); Gov. Code, §§ 7570; 7572; and 7576.)

packet did not contain an IEP (Student did not have one yet), and that the District failed to include its own psychoeducational assessment (ignoring the fact that Yates's letter had asked DMH to jointly conduct their assessment).

40. Student enrolled at Youthcare on September 15, 2006. The Youthcare program included weekly telephonic therapy sessions with Student, Mother, Father, and sometimes with Student's two siblings. Youthcare posted weekly treatment plans on its website for parents to review. Student's treatment plans from his stay at Youthcare do not reference a recommended frequency or duration for family face-to-face therapy.

41. An IEP team meeting was held on November 3, 2006. Student was found eligible for special education under the category of emotional disturbance. The goals in the IEP were developed by Youthcare. DMH was not present at this IEP team meeting and Mother and Father "agree[d] to wait until DMH assessment is completed to further discuss services and placement." Mother initialed the box acknowledging that she had received a copy of "Special Education Parental Rights and Procedural Safeguards."

42. DMH interviewed Student on November 16, 2006, and completed its assessment on December 1, 2006. DMH recommended that Student be placed in a therapeutic residential program and that "[Student] and his parents could benefit from additional mental health services." In recognition of DMH's mistake of not immediately processing the assessment referral from the District, DMH agreed to begin funding Student's placement at Youthcare beginning November 11, 2006, a date that was the statutory maximum time of 50 days to complete the assessment from the time DMH received the referral from the District.

43. An IEP team meeting was held on December 21, 2006. Youthcare representatives participated and reported that Student's substance abuse treatment and therapy were going well, but that Student continued to struggle with completing high school assignments despite his ability to do so. The District offered Student a placement at

Youthcare until his 18th birthday or until DMH recommended discharge. Parents were offered five visits of two days each, up until August 27, 2007, for parents only, following District travel guidelines and the Youthcare Parent Days schedule.⁴ The IEP did not reference travel to Youthcare for enrollment or from Youthcare upon discharge. A Parent Days Event had occurred on December 6 and 7, 2006. As of December 21, 2006, additional Parent Days were scheduled for January 25 and 26, 2007, March 22 and 23, 2007, May 17 and 18, 2007, July 12 and 13, 2007, and August 23 and 24, 2007. Mother and Father stated at the IEP team meeting that the therapy provided at Parent Days sometimes occurred on Saturdays, which would entail a visit of longer than two days. Parents consented to the placement at Youthcare. However, Student's parents disagreed with the IEP team regarding reimbursement for the placement prior to November 11, 2006 and the offer of five visits for parents only during scheduled Parent Days.

44. Prior to the December 21, 2006 IEP team meeting, Gene Hansen, the Director of Youthcare, e-mailed District Special Education Coordinator Kathleen Dadourian (Dadourian) to state that "Parents are expected to attend every [Parent Days] session, siblings are not but it is often helpful to have them attend when possible." Hansen's e-mail also stated that parents generally attended the Parent Days on Thursday and Friday and arranged for a weekend pass for Saturday and Sunday. Around the same time, Father shared with Dadourian an e-mail that he had received from primary therapist Heather Watts (Watts), which was consistent with Hansen's statements. Consistent with Hansen's e-mail, the Youthcare brochure made a distinction between the telephonic "family therapy" offered as part of the Youthcare program and Parent Days, at which time parents were

⁴ The IEP notes referred to "Family Days" whereas Youthcare documents submitted at hearing referred to "Parent Days." The ALJ adopts Youthcare's own description of these events as "Parent Days."

encouraged to attend.

45. At the time of the December 21, 2006 IEP, parents received a copy of the District's travel guidelines for residential placements. The travel guidelines required, in relevant part: that parents were permitted four visits; that hotel stays not exceed two days at a rate of \$80 per night; that car rentals not exceed two days at a rate of \$45 per day; that airline reservations had to be made 30 days in advance; and that all claims for reimbursement be supported by original, itemized receipts. The travel guidelines did not address meal reimbursement or airport parking. Dadourian explained at hearing that the District's travel guidelines were increased or decreased depending on a Student's needs. For example, the District offered Student five parental therapeutic visits at the time of the December 21, 2006 IEP team meeting, despite the guidelines referencing a maximum of four parental visits. Although this was not communicated to Mother and Father at the time of Student's IEP, the maximum hotel rate was flexible depending on availability.

46. The following rules apply to travel reimbursement for District employees: all claims had to be substantiated with original, itemized receipts; all travel had to be at the lowest coach rate; mileage for driving a personal car was reimbursed at IRS rates up to the amount of round trip airfare; other than valet parking, parking was reimburseable; lodging reimbursement was limited to a "moderately priced" hotel; meals were reimburseable up to \$40 per day (\$20 per half day) with the exclusion of gratuities and family meals.

47. Paul McIver (McIver), the Mental Health Clinical District Chief for DMH, testified at hearing that "family therapy" is often a component of residential treatment. McIver distinguished "family therapy" from parent visits by explaining that "family therapy" addresses the family structure and functioning that may impact a child's mental health upon discharge, whereas parent visits are part of a parent's moral and ethical responsibility to maintain a relationship with their child. The necessity for "family therapy" is usually set forth in the treatment plan.

48. Watts was Student's primary therapist at Youthcare from the time of his arrival on September 15, 2006 until November 15, 2006. Watts possessed a bachelor's degree in psychology, a master's degree in social work and was a Certified Social Worker in Utah. Watts's certification allowed her to perform individual therapy, group therapy, assessments and diagnoses. Watts testified that the family therapy referred to in Student's October 13, 2006 Master Treatment Plan was weekly telephonic therapy and in-person family therapy during the scheduled Parent Days. The Master Treatment Plan did not specifically reference in-person family therapy. Watts never called Father or Mother to ask them to visit. If a parent called and asked permission to visit, as compared to her or another therapist calling the parent and asking the parent to come, the parent-requested visit was not therapeutically necessary. If a parent did come to visit outside of the Parent Days schedule, Watts would take advantage of the visit and hold the weekly therapy session in person. On December 2, 2006, Watts responded to Father's e-mail question about the importance of the entire family being present at Family Days. Watts wrote that she thought it was important for the whole family to participate in family therapy because "it is best that the whole family work on change together." Although this e-mail expresses Watts's preference for in-person therapy involving the entire family, it does not equate to a statement that the presence of Student's siblings was therapeutically or educationally necessary. At hearing, Watts testified that in her conversations with the District around the time of the December 21, 2006 IEP, she would have stated that sibling attendance at Parent Days was recommended but not required.

49. Lisa Wisham (Wisham) was the academic director at Youthcare and was a member of Student's treatment team. The treatment team was a multi-disciplinary team of Youthcare employees who met weekly to monitor and report on Student's progress, both educationally and psychologically. The treatment team developed monthly treatment plans that contained goals and objectives. Wisham's testimony was consistent with that of Watts:

that family therapy for Youthcare students was done telephonically on a weekly basis; that therapeutic visits from parents were provided during the Parent Days schedule, unless otherwise recommended by a therapist; and that Parent visits were possible at other times, but such visits were not always therapeutically necessary.

50. Brian Stella conducted group therapy sessions with Student at Youthcare from the time of Student's enrollment until early January of 2007, when Stella became Student's primary therapist. Stella had a master's degree in counseling and was a Licensed Professional Counselor in Utah. The Parent Days at Youthcare were scheduled on Thursdays and Fridays to permit face-to-face therapy with Students and family as well as multi-family therapy to be followed by a family visit on the weekend. Family weekend visits were intended to give the family and the student an opportunity to practice what they had learned in therapy in order to "get healthy." Stella never made an express recommendation that Student's siblings needed to attend family therapy during family days, but did state that it would be beneficial. If Stella had recommended additional family therapy, he would expect it to be noted in Student's treatment plans. At hearing, Stella expressed that if a parent requested a visit, and it was approved by the treatment team, Stella would consider such a visit therapeutically necessary. Stella's opinion on this point was never provided to the District when Student's IEP was written, was contradicted by Watt's testimony, and was contradicted by Stella's own testimony that the Parent Days events were intended to provide the required face-to-face therapy with parents.

YOUTHCARE REIMBURSEMENT CLAIMS

51. On September 14, 2006, the day of Student's discharge from Del Amo, his Father, Mother and two siblings drove to Youthcare in the family's motor home. The family incurred expenses of 2 nights of campground fees totaling \$63.41 and food costs of \$31.89 and \$13.83. The roundtrip driving distance from Student's home to Youthcare is 1356 miles. The Internal Revenue Service rate for mileage reimbursement was \$.445 per

mile for business use in 2006. (See

<http://www.irs.gov/taxpros/article/0,,id=156624,00.html>.)

52. Student asked Father to visit him over the Thanksgiving holiday in 2006. Father paid \$955.29 for airfare, hotel and a rental car for travel between November 22, 2006 and November 26, 2006. Separate, itemized receipts were not produced for the airfare, hotel and rental car. Father also spent \$215.25 for food, including some meals that were eaten by Student.

53. Father, Mother and Student's two siblings traveled to Youthcare on December 6, 2006, and returned home on December 10, 2006. The total airfare paid was \$668.40. The family paid \$459.28 for hotel accommodations, but no itemized individual receipt was produced to support the claim. Rental car charges of \$222.43 were paid for four days of rental plus taxes. Rental car gasoline was purchased for \$15.82 and \$36 was paid for airport parking. Father also claimed food reimbursement for the family totaling \$485.85.

54. Father and Student's brother traveled to Youthcare on December 23, 2006 and returned on December 26, 2006. Father paid \$79.95 for three nights of RV camping and \$199.56 for food, which included food for Student and his brother. Round trip mileage was 1356 miles.

55. Student's entire family of Father, Mother and 2 siblings, traveled to Youthcare on January 24, 2007, and returned home on January 28, 2007. The total airfare paid was \$949.20. The total hotel bill was \$247.96 for four nights. The family paid \$321.81 for the use of a rental car, including a charge of \$93.75 for refueling. Food costs of \$288.52 were also paid. The family paid \$91 for valet airport parking. The family participated in face-to-face therapy with Stella.

56. To demonstrate that sibling visits were not required, the District presented evidence that Student's siblings broke the Youthcare rules during their visit. Student's

sister gave cigarettes to a Youthcare student, and Student's brother used inappropriate language. Stella attempted to address the sibling behavior during a subsequent telephonic therapy session with the family; however, Student's sister did not participate because she was watching pay-per-view movies. Stella also attempted to have Father address the use of profanity by Student's brother. Father was unwilling to intervene regarding the use of profanity. Stella expressed that he perceived that the family therapy was not particularly important to the family based on this behavior.

57. Mother flew to visit Student on March 10, 2007 and returned on March 11, 2007. Mother paid airfare charges of \$349.97, one night's hotel charges of \$89.88 and car rental charges of \$111.22 for two days rental. No food receipts were submitted at hearing. Stella did not request Mother to make this visit. Stella conducted therapy with Mother and Student on Saturday, March 10, 2007, during which it was revealed that Mother had permitted Student to violate Youthcare rules by accessing the internet.

58. Father flew to visit Student on March 21, 2007 and returned on March 25, 2007. Father paid airfare charges of \$327.30; four nights of hotel charges of \$480.44; car rental charges of \$220.29 that included a GPS navigation system fee of \$43.96, and airport parking charges of \$48. Food costs of \$182.73 were also paid; however, some of the claimed meals were for two people. Father also paid \$16.96 for gasoline for the rental car.

59. Student made two visits home between April 10, 2007 and April 16, 2007, and between May 5, 2007 and May 14, 2007. Student's airfare for these trips was \$237.50 and \$253. At an IEP team meeting on April 17, 2007, Student agreed to the continuation of his placement at Youthcare until July 6, 2007, with funding for at least two home visits prior to July 6, 2007. In a May 8, 2007 e-mail to Dadourian, Father stated that he intended to turn in his receipts for airline reimbursement, demonstrating that he understood at the time that he was entitled to reimbursement for this airfare. Student never submitted a travel reimbursement claim to the District for these visits.

60. Father explained at hearing that he did not submit receipts for travel reimbursement because he did not trust the District with his original receipts. However, Father's advocate Vikki Rice (Rice), who worked with Father on obtaining Student's services in 2006 and 2007, was aware that other parents in the District had obtained reimbursement without original receipts. Rice also did not submit receipts on Student's behalf. Accordingly, Father's reason for not seeking earlier reimbursement was not supported by the evidence.

61. Student passed the GED exam on May 16, 2007. Father drove to Youthcare on May 17, 2007, to pick up Student and bring Student home after discharge. Father incurred lodging expenses of \$155.50 for two nights at a hotel near Youthcare. On May 19, 2007. Father incurred lodging expenses of \$67.58 in Primm, Nevada, where he had stopped to rest while driving. Father could not explain why the hotel receipt showed a room rate of \$38, but the charges amounted to \$67.58. The round trip mileage was 1356 miles. No food receipts related to this visit were produced at hearing.

62. On January 27, 2007, Mother and Father spent \$371.68 on clothing for Student. According to Father, the clothing was purchased because Student did not have adequate winter wear for the climate in Utah and because Student's preferred clothing of rock band t-shirts was prohibited at Youthcare. However, review of the receipt shows that the items purchased included four short sleeve t-shirts, one of which read "Disco Sux", two pairs of pants, two jackets and a beanie. Father explained that the "Disco Sux" t-shirt was for Student to wear when he was outside of the Youthcare facility visiting with the family. According to Stella, a military jacket and the "Disco Sux" t-shirt were inconsistent with the Youthcare dress code.

63. The total cost of Student's Youthcare tuition prior to November 11, 2006 was \$25,479. This amount was calculated using the tuition invoices sent to Mother and Father for September, October and November of 2006 (\$7,152 tuition from September 15, 2006

through September 30, 2006, plus \$13,857 tuition for October of 2006, plus \$4470 tuition for November 1, 2006 through November 10, 2006 calculated by pro-rating the daily rate for 10 days).

64. Parents obtained loans to cover Student's tuition between September of 2006 and December of 2006. According to Father, the family had no way to pay the tuition other than by obtaining student loans. A loan of \$17,060 was disbursed on September 28, 2006 at a variable annual interest rate of 9.187 percent, with an \$897.89 origination fee. A loan of \$13,857 was disbursed on September 29, 2006 at a variable annual interest rate of 9.187 percent, with a \$729.32 origination fee. A loan of \$13,410 was disbursed on November 1, 2006, at a variable annual interest rate of 9.567 percent, with a \$705.79 origination fee. A loan of \$10,728 was disbursed on December 1, 2006, at a variable annual interest rate of 9.575 percent, with a \$564.63 origination fee. To obtain the loans, parents paid a loan application fee of \$650. The application fee plus the loan origination fees for September through the December 2006 disbursement total \$3,547.63. Payments on the loans began on January 1, 2007, at an interest rate of 8.830 percent. The record in this matter was closed on December 24, 2007, such that parents have incurred one year of interest. One year of interest on \$25,479 at the rate of 8.830 percent is \$2,249.80.

65. Student claims that interest in the amounts of \$1,292.53 and \$1,657.34 should be reimbursed for psychological services and transportation costs, respectively. Father testified that these amounts were calculated by Mother based on Mother determining an "average" credit card interest rate of 15 percent that was applied to all of the claims for reimbursement. Mother did not testify regarding these calculations, the only credit card bill in evidence that displayed an interest rate showed an annual percentage rate of 9.90, and numerous payments were made by cash or check. Further, as acknowledged by Father, there was no way to calculate when a particular charge had been paid off because credit cards carry a balance. Student did not demonstrate that the

balances on the family credit cards contained only charges related to visitation, did not produce evidence of what the credit card balances were, and did not provide any evidence about the dollar amount of payments made. For these reasons, Student's calculation of interest due on medical and travel expenses is rejected.

CONCLUSIONS OF LAW

BURDEN OF PROOF

1. As the petitioning party, Student has the burden of persuasion on all issues. (*Schafferv. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

CHILD FIND

2. Student's first contention is that the District violated its child find obligation by not suspecting Student of requiring special education based on ADHD or emotional disturbance between May 31, 2005 and September of 2006.

3. "Child find" is expressly provided for in the IDEA at title 20 United States Code section 1412(a)(3)(A). "Child find" refers to the duty that IDEA imposes upon states to identify, locate and evaluate all children with disabilities, including homeless children, wards of the state, and children attending private schools, who are in need of special education and related services, regardless of the severity of the disability. (20 U.S.C. §1412(a)(3)(A); Ed. Code, § 56171 ["child find" applicable to private school children]; and Ed. Code, § 56301, subd. (a) and (b) [general "child find" obligation and applicability to migrant children or children suspected of having a disability who are nonetheless advancing from grade to grade].) "The purpose of the child-find evaluation is to provide access to special education." (*Fitzgerald v. Camdenton R-III School District* (8th Cir. 2006) 439 F.3d 773, 776.) A district's child find obligation toward a specific child is triggered when there is reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v.*

Rae (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) In *Hoffman v. East Troy Community Sch. Dist.* (E.D. Wis. 1999) 38 F.Supp.2d 750, 764-767, the United States District Court found that a school district had not violated its child find obligation. There, a student had transferred from a parochial school to a public school in the fall semester and his grades declined to C's and one F. The student's father and school officials repeatedly discussed that Student may have been working too much outside of school, yet the father only mentioned in passing that the student was seeing a therapist for depression. The father was aware that a release would be required to provide further information from the therapist to the school, but did nothing. Under these facts, the District Court found no child find violation. (*Id.* at pp. 764-767.)

4. A student "whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder" and who meets the eligibility criteria for specific learning disability or other health impairment under Education Code section 56377 and California Code of Regulations, tit. 5, section 3030, subdivisions (f) and (j), is entitled to special education and related services. (Ed. Code, § 56339, subd. (a).) "Other health impairment" is defined, in relevant part, as "having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that . . . is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder . . . and [a]dversely affects a child's educational performance." (34 C.F.R. § 300.8(c)(9); see also Cal. Code Regs., tit. 5, § 3030, subd. (f).) A student is eligible for special education under the category of "specific learning disability" if: 1) the student has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written,

which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, and; 2) based on a comparison of "a systematic assessment of intellectual functioning" and "standardized achievement tests" has a severe discrepancy between intellectual ability and achievement. (34 C.F.R. § 300.8(c)(10)(i); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (j).) "Specific learning disability" does not include "learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage." (34 C.F.R. § 300.8(c)(10)(ii); Ed. Code, § 56337, subd. (a).)

5. A child may be eligible for special education and related services under the category of emotional disturbance if the following conditions are met:

Because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:

- (1) An inability to learn which cannot be explained by intellectual, sensory, or health factors.
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations.
- (4) A general pervasive mood of unhappiness or depression.
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

(5 C.C.R. § 3030, subd. (i).)

6. Here, the District did not violate its child find obligation regarding possible

special education eligibility based on ADHD during any relevant time period. Although Father reported this condition to the school nurse when Student was in high school and to Paull at EPHS, the only accommodation he requested was that Student be allowed to read books if he had completed all of his work in class. Student did not present evidence that his behaviors at school, either with school discipline or failure to complete work were related to ADHD. Specifically, Student's school performance ebbed and flowed from semester to semester, rather than day to day, and Student presented no evidence that such a pattern was consistent with interference from ADHD. There would have been no reason to suspect that Student should have been assessed to determine if he was eligible for special education under the category of other health impairment because there was no evidence that Student had limited alertness in the educational environment. Student's performance on tests like the CAHSEE, which Student easily passed, showed that a condition like ADHD had not affected Student's retention of the high school curriculum. Similarly, there would have been no reason to suspect that Student should be assessed as possibly qualifying for special education as a child with a specific learning disability because when Student did perform in school, like Student's first few months at EPHS, he could perform at a level consistent with his cognitive abilities. The District's child find obligation was not triggered by Student's ADHD. (Factual Findings 4 through 10, 13, 16, 17, and 18; Legal Conclusions 1 through 4.)

7. The District's child find obligation was triggered as of April 11, 2006, when Father provided the note from Fabiano regarding Student's possible depression. "A general pervasive mood of unhappiness or depression" is identified as one of the major factors in determining whether a Student qualifies for special education under the category of emotional disturbance. At the time Father provided Fabiano's note at EPHS, Student had a history at EPHS of performing well and then suddenly stopping his progress and attendance. The very reason Student was at EPHS was that he had a similarly sporadic

academic history at a District high school. To the extent that Paull did not find information about Student's substance abuse problems noteworthy when compared to other EPHS students, Student's substance abuse history became significant when Father provided information that Student was in treatment for depression. Father had also provided information to Paull about Student's problems at home, which, when considered with Fabiano's note and Student's academic record, should have triggered further assessment. Student's academic record also showed that he had at one time been eligible for a GATE program, which, when considered with the above facts, would have further supported a suspicion of emotional disturbance. Moreover, the District's child find duty was not absolved merely because Student had been dropped from EPHS effective April 7, 2006. The child find obligation is not limited to students who are technically enrolled in a District school. The District did not classify Student as a drop-out, but instead classified him as having left EPHS for medical reasons, which only further demonstrates that the District should have suspected special education eligibility under the category of emotional disturbance. In April and May of 2006, Student was in therapy with Fabiano. Fabiano could have supplied information to District personnel regarding Student's depression, which, when coupled with Student's prior record in the District would have supported a finding of special education eligibility under the category of emotional disturbance. *Hoffman v. East Troy Community Sch. Dist.*, *supra*, 38 F.Supp.2d at pages 764-767, is distinguishable because there, the student had just transferred to a District high school for one semester and had failed only one class prior to the student asserting a child find violation based on depression. In the instant case, it is Student's lengthy history of demonstrated ability coupled with poor work completion that, when coupled with evidence of depression should have triggered the District's suspicions of special education eligibility. Accordingly, the District violated its child find obligation to Student beginning April 11, 2006. (Factual Findings 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16 through 22, and 38; Legal Conclusions 1, 3,

and 5.)

PROCEDURAL DENIALS OF FAPE

8. Student's second allegation is that he was denied a FAPE because the District committed the following procedural errors: a) the District failed to timely respond to parents' request for an individualized education plan (IEP); b) the District failed to give parents timely notice of the procedural safeguards regarding special education; c) an assessment by DMH did not occur until December 1, 2006; and, d) the District failed to provide prior written notice when it refused to assess Student in 2005-2006 and the summer of 2006 and when it did not propose an educational placement for the fall of 2006.

9. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School District No. 23* (Target Range) (9th Cir. 1992) 960 F.2d 1479, 1484.)

10. Student alleged that he was denied a FAPE because the District failed to timely respond to Father's request for an IEP team meeting. A District must conduct an IEP team meeting within 60 days after receiving parental consent for an initial assessment for special education eligibility. (Ed. Code, § 56043, subd. (c).) If the referral for special education occurs during a pupil vacation, the 60 day timeline does not start until pupil school days begin again. (Ed. Code, § 56043, subd. (c); Ed. Code, § 56344, subd. (a).)

11. At hearing, Student did not establish the exact date that Father contacted Siembieda during the summer of 2006 to request an IEP team meeting, but instead generally proved that it was in late July or early August. Siembieda did not respond with a denial, but instead correctly told Father that the first step would be to conduct an

assessment. Based on the EPHS enrollment agreement, Student's school of attendance was the high school that had referred him to EPHS. Siembieda correctly informed Father that this school was on summer vacation. Pursuant to Education Code section 56344, subdivision (a), an IEP team meeting would have been timely held if it occurred within 60 days of the beginning of the 2006-2007 school year. An IEP team meeting was held on November 3, 2006, within 60 days of the beginning of the school year. Accordingly, no procedural violation occurred on this basis. (Factual Findings 15, 22, 31, and 41; Legal Conclusions 1, 9 and 10.)

12. Student alleged that he was not given a timely notice of procedural safeguards. Prior to October 13, 2006, title 34 Code of Federal Regulations part 300.504, subdivision (a), provided that the parents of a child with a disability had to be given a notice of procedural safeguards: 1) upon initial referral for an evaluation; 2) upon each notification of an IEP meeting; 3) upon reevaluation of a child; and 4) upon receipt of a request for due process. Similarly, Education Code section 56301, subdivision (d)(2) provided that the parents of a child with a disability were required to be given a copy of their procedural rights and safeguards at least annually, or upon a referral for assessment, an initial assessment, or upon the filing of a due process hearing request. (See also Ed. Code, § 56321, subd. (a) [A notice of procedural safeguards must be provided to parents with any assessment plan].)

13. Here, Student alleged in his complaint that "the first documentation of the parent's receipt of the District's procedural safeguards was in November 3, 2006" at the first IEP team meeting. However, the evidence at hearing demonstrated that Mother and Father received a notification of procedural safeguards at the time that the District assessment plan was consented to on September 13, 2006 and at the November 3, 2006 IEP team meeting. A notice of procedural safeguards was not required to be provided at any other time. Moreover, Student did not present evidence that Student suffered a loss of

educational benefit or Mother and Father were prevented from participating in the IEP team meeting because the notices of procedural safeguards should have been provided at some other time. In light of the above facts, no procedural violation occurred on this basis. (Factual Findings 31, 37, 41; Legal Conclusions 1, 9 and 12.)

14. Student alleged that he was denied a FAPE because although Father signed a referral to DMH on September 13, 2006, the DMH assessment did not occur until December 1, 2006. A school district must initiate a referral for a mental health assessment within five working days of its receipt of parental consent to a referral. (Cal. Code Regs., tit. 2, § 60040, subd. (a).) The community mental health agency shall develop a mental health assessment plan and provide it to a parent within 15 days of receipt of the school district's referral. (Cal. Code Regs., tit. 2, § 60045, subd. (b).) If mental health services are recommended following a mental health assessment, then an IEP team meeting must be convened at which time the provision of services must be added to the IEP. (Gov. Code, § 7572, subd. (d).) The school district must schedule an IEP team meeting pursuant to Education Code section 56344 within 50 days from the mental health agency's receipt of the parent's written consent to the mental health assessment (Cal. Code Regs., tit. 2, § 60045, subd. (d).)

15. Student was not denied a FAPE on this ground. DMH acknowledged that it had mistakenly rejected Yates's September 15, 2006 referral for assessment as being incomplete. DMH undertook the assessment of Student as quickly as possible once the mistake was noticed, and funded Student's treatment at Youthcare retroactively to November 11, 2006, 50 days from the date it received the assessment referral. Student cannot demonstrate how he lost any educational opportunity while he was enrolled in the unilateral placement chosen by his parents and DMH ultimately made its eligibility decision retroactive to November 11, 2006, the first possible date of eligibility for DMH services. Student was not denied a FAPE because the DMH assessment was delayed.

(Factual Findings 39, 40, 41, 42, 43; Legal Conclusions 1, 9 and 14.)

16. Student also alleged that his right to prior written notice was violated. A parent must be provided "written prior notice" when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include a description of the action refused by the school district, an explanation of why the district refuses to take the action, a description of each evaluation procedure, test, record, or report used as a basis for the refused action, a description of any other factors relevant to the district's refusal, a statement that the parents have protection under the procedural safeguards of IDEA, and sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

17. Here, Student's right to prior written notice was not denied. Student alleged in his Complaint that the District "failed to provide the parents with Prior Written Notice when it refused to assess [Student] in 2005-06 and summer, 2006 and when it failed to provide [Student's] parents with any proposed educational placements, in fall, 2006." However, no evidence was produced at hearing that parents requested and the District "refused" to assess Student during the 2005-2006 school year. The evidence showed that in July or August of 2006, Father called Siembieda to request an IEP team meeting. At the time, Siembieda did not refuse to initiate an assessment of Student and to the contrary, Siembieda notified Yates that an assessment would be required as soon as school started in September. An assessment was ultimately conducted beginning on September 13, 2006, just over a month after Father called Siembieda. Student's allegation that he was entitled to prior written notice that no placement decision was made in the fall of 2006 is meritless. Student was unilaterally placed by his parents prior to the completion of the District assessment, such that there was no notice for the District to give at that time. After the unilateral placement, an IEP team meeting was held on November 3, 2006. At the

November 3, 2006 IEP team meeting, it was discussed and parents acknowledged in writing that the IEP would be continued for consideration of the placement determination until DMH completed its assessment and made recommendations. The November 3, 2006 IEP was the first time that it was determined that a placement decision would be delayed. Accordingly, to the extent Student was entitled to written notice, the November 3, 2006 IEP document is the written notice. Under the above facts, the District did not violate the prior written notice requirements at any time. No procedural violation occurred. (Factual Findings 31, 37, 39, 40, 41, 42, 43; Legal Conclusions 1, 9 and 16.)

THE OFFER OF FAPE IN THE FALL OF 2006

18. Student's final allegation is that he was denied a FAPE after he was identified as being eligible for special education in the fall of 2006 because the District failed to make an offer of an appropriate placement and related services.

19. FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet State educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services.]) Medical services as a related service are limited to diagnosis and evaluation only as may be required to assist an individual with exceptional needs to benefit from special education. (Ed. Code, § 56363, subd. (a).)

20. Transportation may, when educationally appropriate, include transportation costs and expenses related to family visits to a distant residential placement. (See *Aaron M. v. Yomtov* (N.D. Ill. 2003) 2003 U.S. Dist. LEXIS 1531 (FAPE for residential placement included transportation costs for five, two-day parental visits, which included a \$35 per

person meal allowance); *Richmond Elementary Sch. Dist. and Lassen County Office of Education* (CA 2003) 104 L.R.P. 4695 [meal reimbursement provided for parental visits to in-state distant placement].) Parental transportation expenses may be denied where there is no evidence that parental participation at the school was required to meet an IEP goal. (See *Agawam Public Schools* (MA 2004) 42 IDELR 284.)

21. Clothing required to meet a school dress code has been found not to be reimburseable absent a showing that it was necessary in order to benefit the student educationally. (*Agawam Public Schools* (MA 2004) 42 IDELR 284 [reimbursement claim denied on ground that a parent would have an obligation to provide clothing that met the school's dress code even if the child was not residentially placed].)

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

services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. Of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

23. To the extent Student contends that he should have been offered a placement and services at the November 3, 2006 IEP team meeting, this contention is meritless. Mother and Father, as members of the IEP team, agreed to delay discussion of placement and services until DMH had completed its assessment. As of the December 21, 2006, IEP team meeting, DMH offered Student retroactive funding at Youthcare to November 11, 2006. Accordingly, Student cannot demonstrate that he lost any educational benefit because the offer of placement and services was not finalized until December 21, 2006. (Factual Findings 40, 41 and 42; Legal Conclusions 1 and 9.)

24. Student also contends that the District's offer of FAPE in the December 21, 2006 IEP should have included reimbursement for parental visits other than during the two- day scheduled Parent Days, should have included reimbursement for Student's two siblings to travel with the Mother and Father, should have included meal expenses and should have included airport parking. Student also contends that the District should reimburse him for some clothing expenses, for airfare for two therapeutic home visits made by Student, and for his transportation to and from Youthcare upon enrollment and discharge.

25. At the December 21, 2006 IEP team meeting, the District offered Student a FAPE regarding the number of parental therapeutic visits to Youthcare, the number of days allocated for each visit and the reimbursement of advance-purchase airfare. Gene Hansen, the Director of Youthcare, and Student's primary therapist Watts had both told the District

prior to the December 21, 2006 IEP team meeting that Student's siblings were not required to attend Parent Days for in-person family therapy. Watts and Stella both confirmed that the family therapy at Youthcare generally consisted of the weekly telephone conferences, with the exception of Parent Days, which were scheduled for the purpose of providing time for in-person therapy that included parents. As testified to by McIver from DMH, a parent has a moral and ethical duty to maintain a relationship with his or her child that exists outside of the educationally necessary therapy process. Watts and Stella confirmed that many parents scheduled visitation for the weekend after the Thursday and Friday Parent Days. Youthcare representatives were part of the IEP team and there was no evidence that Youthcare objected to the proposed funding of five parental visits to coincide with Youthcare Parent Days. The Youthcare online brochure makes a distinction between telephonic "family therapy" and Parent Days, at which time parents are encouraged to attend. Accordingly, at the time of the December 21, 2006 IEP team meeting, the information known by the District was that Parent Days were set aside for in-person therapy with parents and that siblings were not required to attend. Student was offered FAPE in this regard as of December 21, 2006, and is therefore not entitled to reimbursement for expenses related to sibling visits to Youthcare, expenses for parental visits that exceeded two days, or expenses for parental visits that did not coincide with Youthcare Parent Days. Mother and Father accepted an offer in the April 17, 2007 IEP addendum of Student transportation for two therapeutic home visits. To the extent the costs of Student's two home visits were sought at hearing, no denial of FAPE occurred because the visits were already authorized by the April 17, 2007 IEP addendum. However, the District's offer of FAPE should have included reimbursement for reasonable airport parking, food reimbursement for parents and the cost of transporting Student to Youthcare upon enrollment and from Youthcare upon discharge. (Factual Findings 43 through 50; Legal Conclusions 1 and 19 through 20.)

26. Student's claim for clothing reimbursement is denied. The evidence at hearing did not explain how Student could have been enrolled at Youthcare for over four months prior to obtaining proper clothing. Although it may have been colder in Utah than in southern California during the winter, Mother and Father had a duty to provide appropriate clothing for Student no matter where he went to school. Student did not demonstrate that the clothing purchased was necessary in order for Student to benefit educationally, nor did Student demonstrate that the clothing purchased was only useable while Student was enrolled at Youthcare. The District did not deny Student a FAPE by not offering clothing reimbursement at Student's IEP team meetings and Student is otherwise not entitled to reimbursement of this expense. (Factual Finding 62; Legal Conclusions 1, 19, 21, and 22.)

REMEDIES

27. As to all allegations, Student contends that he is entitled to reimbursement of medical expenses, psychological expenses, drug treatment expenses, tuition expenses for Youthcare prior to Student's IEP, travel expenses for parents and siblings, clothing expenses, and interest and loan fees totaling \$51,879.05.

28. Parents may be entitled to reimbursement of private school tuition if a unilateral private school placement by parents resulted from a district's failure to fulfill its "child find" obligation. (See *Doe v. Metropolitan Nashville Public Schools* (6th Cir. 1998) 133 F.3d 384, 387-388; *Wolfe v. Taconic Hills Central School District* (N.D.N.Y. 2002) 167 F.Supp.2d 530, 534-535 [tuition reimbursement awarded after weighing equities].) A parent may be entitled to reimbursement for placing a student in a private school without the agreement of the local school district if the parents prove at a due process hearing that: 1) the district had not made a FAPE available to the student prior to the placement; and 2) that the private school placement is appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. §

300.148(c); ⁵ see also *School Committee of Burlington v. Department of Ed.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE.) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [126 L.Ed.2d 284, 114 S.Ct. 361] (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress).) A reimbursement award to parents may include reasonable interest and fees related to obtaining the tuition funds. (See *J.P. v. County School Board of Hanover County, Virginia* (E.D. Va. 2007) 47 IDELR 187 [unavoidable credit card transaction fees included in reimbursement award, however, avoidable high interest rates and late fees not awarded].)

29. Reimbursement may be denied if at least ten days prior to the private school enrollment the parents fail to give written notice to the district about their concerns, their intention to reject the district's placement and their intention to enroll the student in a private school at public expense. (20 U.S.C. § 1412(a)(10)(C)(iii)(I)(bb); 34 C.F.R. § 300.148(d)(1).) Reimbursement must not be denied on this basis if the parents had not been provided notice of the notice requirement or compliance with the notice requirement "would likely result in physical harm to the child." (20 U.S.C. § 1412(a)(10)(C)(iv)(I)(bb) &

⁵ Prior to October 14, 2006, this regulation was numbered as 34 U.S.C. § 300.403. Because no substantive changes were made to the regulation, the latest version has been cited.

(cc); 34 C.F.R. § 300.148(e)(1)(ii) & (iii).) The cost of reimbursement may, in the discretion of the ALJ, not be reduced for failure to provide the required notice if compliance with the notice requirement “would likely result in serious emotional harm to the child.” (20 U.S.C. § 1412(a)(10)(C)(iv)(II)(bb); 34 C.F.R. § 300.148(e)(1).)

30. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a free appropriate public education. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*) Relief may be provided even though the student is no longer eligible for special education services. (*Capistrano Unified School District v. Wartenburg* (9th Cir. 1995) 59 F.3d 884, 890; *Student W. v. Puyallup School Dist., supra*, 31 F.3d 1496.)

31. The process of obtaining special education mental health services is not designed for an emergency situation. (Gov. Code § 7576, subd. (f); Cal. Code Regs., tit. 2, § 60040, subd. (e).) If a student requires emergency services, a parent must seek other resources. (Gov. Code § 7576, subd. (g); Cal. Code Regs., tit. 2, § 60040 (e).)

32. During periods of hospitalization, psychiatric hospitalization or placement in “a health facility for medical purposes,” educational responsibility rests with the district where the psychiatric hospital is located. (Ed. Code, § 56167, subd. (a).)

33. As an initial matter, Father did not provide the required ten days notice that

Student would be unilaterally placed at Youthcare, however, this will not result in a denial of reimbursement. Father's e-mails to Siembieda stated that residential treatment was recommended, but never expressly stated that Mother and Father intended to enroll Student in private school at public expense within ten days. Instead, the first notice to the District of the planned enrollment at Youthcare was when Father told Yates about Youthcare during her initial psychoeducational assessment of Student. However, the first time that Father received a notice of procedural safeguards was the same day that he met Yates, such that the ten day notice requirement is excused on this basis. Further, the recommendations of Dr. Valencerina, combined with Student's failure to succeed in less restrictive placements over the summer of 2006, demonstrate that Student would have suffered "serious emotional harm" had a residential placement like Youthcare been delayed. (Factual Findings 27, 29, 31, 35, 36, 37; Legal Conclusions 1 and 29.)

34. As a remedy for the child violation, Student is entitled to reimbursement for the Youthcare tuition between September 15, 2006 and November 10, 2006, the cost of initially transporting Student to Youthcare (including food), and the transportation costs (including food and airport parking) for a two-day visit by Mother and Father at the December 6 and 7, 2006 Parent Days. Because Mother and Father had no way to pay the sizeable tuition at Youthcare without taking out educational loans, the tuition reimbursement will include loan application fees related to Youthcare enrollment, as well as interest at the rate of 8.830 percent. However, interest on transportation costs will be denied because Student failed to sufficiently prove a basis for calculating an award of interest.

School psychologist Yates found Student eligible for special education based upon her assessment of Student on September 13, 2006. Had Student been assessed by District personnel after April 11, 2006, it is likely that Student would have required a program like that provided by Youthcare to be implemented as of the beginning of the 2006-2007

school year. Youthcare was appropriate for Student given that when the District IEP team met regarding Student in November and December of 2006, the team adopted Youthcare's goals and recommended placement at Youthcare.

As demonstrated at hearing, Mother and Father's participation in Parent Days was a recommended part of Student's treatment at Youthcare, however, Student failed to prove that parent visits in excess of the two day Parent Days program were required to provide a FAPE. Accordingly, parent travel to the Parent Days program that pre-dated the December 21, 2006 IEP will be awarded. It can be inferred that the reimbursement guidelines applicable to District employees regarding airport parking, mileage and meals are reasonable and thus, they will be applied to calculate reimbursement amounts for these expenses. The following expenses will be reimbursed for transporting Student to Youthcare using the family motor home: \$603.42 mileage reimbursement (generally equivalent to two round-trip airfares as shown by Factual Findings 57 and 58); \$63.41 campground rental and \$45.72 for food (calculated based on the total of receipts submitted because any food consumption by Student's sibling appears to de minimus). The following expenses will be reimbursed for the December 6 and 7, 2006 Parent Days: \$334.20 (Mother and Father's airfare, calculated by dividing the airfare for four persons in half); \$229.64 for hotel (two nights calculated by dividing the four night hotel bill in half); \$111.22 for rental car (calculated by dividing a four day rental car bill in half); \$15.82 for rental car gasoline; \$160 for food (calculated as two days at \$40 per day for two persons); and \$18 for airport parking (calculated by dividing the four day parking charge in half). In sum, the following tuition expenses will be reimbursed for the period of September 15, 2006 through November 10, 2006: \$25,479 for tuition (calculated as the pro-rated amount for tuition between September 15, 2006 and November 10, 2006); \$2,249.80 interest on tuition (one year of interest on \$25,479 calculated at 8.830 percent); and \$3,547.63 in loan application and origination fees. The total reimbursement amount for the child find claim, obtained by

adding the tuition costs to the travel expenses that were awarded for travel prior to December 21, 2006 is \$32,857.86. (Factual Findings 21, 27, 34, 38, 39, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 53, 63, 64, and 65; Legal Conclusions 1, 19, 20, 22, 28, and 30.)

35. Student is not entitled to compensatory education in the form of reimbursement for expenses incurred between May of 2006 and August of 2006. To the extent Student seeks reimbursement for Fabiano's services, this claim is denied because Student's visits to Fabiano began prior to the time period when the District first should have suspected that Student needed assessment. To the extent Student incurred medical expenses in May for visiting family physician Dr. Zamost, these services were for medical treatment that could not have been provided as a related service had Student been found eligible for special education. Accordingly, reimbursement for co-payments for Dr. Zamost and for laboratory work is denied. Reimbursement is denied for the amount paid to Dr. Thomas Firnberg because Student presented no evidence regarding the purpose or outcome of this one time psychiatric visit. Reimbursement for expenses related to Student's overdose incidents in June of 2006 is denied because these expenses were for emergency medical and psychiatric treatment. Special education mental health services are not intended to apply to emergency situations and the District did not have educational responsibility for Student while he was in a hospital outside of the District boundaries. Reimbursement for expenses related to the Center for Discovery is denied because while there, Student was enrolled in the Opportunities for Learning program in another school district. Accordingly, the District had no educational responsibility for Student at the time. Reimbursement for the one time office visit to Marc J. Liger, M.F.T. is denied because Student did not present evidence regarding the purpose or outcome of this visit. Reimbursement is denied for the amount parents paid to Twin Town for outpatient drug rehabilitation because this placement was limited to substance abuse treatment without any psychological therapy or educational component. Moreover, this outpatient program

had not been recommended by a physician or psychologist, but had been implemented by parents as a compromise with Student. Reimbursement is denied for the insurance co-payment to Dr. Alan D. Vu, because it was for a medical visit related to psychiatric medication. Reimbursement is denied for the insurance co-payments to Pesceone because the therapy goals were not educationally related, but instead focused on Student and his family. (Factual Findings 19, 20 through 30, 32 and 34; Legal Conclusions 1, 19, 20, 22, 28, 30, 31 and 32.)

36. Student is entitled to some reimbursements related to the offer of FAPE in the December 21, 2006 IEP. The December 21, 2006 IEP should have included meals for Mother and Father during the two-day travel to Parent Days, reasonable airport parking and the cost of transporting Student from Youthcare to home upon discharge. As set forth in the District employee travel guidelines, a reasonable meal per diem would have been \$40 per day. The amount of meal reimbursement will be calculated using this figure, rather than the receipts submitted by Mother and Father, in recognition that the per diem amount should have been provided to Mother and Father at the time of the IEP team meeting. Student did not present sufficient evidence on which to calculate interest on food and travel expenses. Although Student failed to demonstrate that the number and duration of family visits to Youthcare offered in the December 21, 2006 IEP should have been greater, this Decision will include an award of reimbursement without interest for Mother and Father's airfare and/or mileage, two days of hotel accommodations, and two days of meals for each Parent Days actually attended after December 21, 2006, as set forth in the December 21, 2006 IEP.

The following expenses will be reimbursed for the January 25 and 26, 2007 Parent Days travel: \$474.60 for airfare (calculated by dividing the airfare for Mother, Father and two siblings in half); \$123.98 for hotel (calculated by dividing the four day hotel bill in half); \$114.03 for rental car (calculated by deducting a \$93.75 refueling charge from the total

four day rental and dividing in half); \$160 for meals (calculated as two days for 2 people at \$40 per day). The following expenses will be reimbursed for the March 22 and 23, 2007 Parent Days travel: \$327.30 (Father's airfare); \$240.22 for hotel (two nights calculated by dividing the four night hotel bill in half); \$88.17 (calculated by subtracting GPS charges of \$43.96 from the four day rental car bill and dividing in half); \$80 for food (calculated as two days at \$40 per day); and \$24 for airport parking (calculated by dividing the four day parking charge in half). The following expenses will be reimbursed for Student's travel home from Youthcare, which coincided with the May 17 and 18, 2007 Parent Days: \$603.42 mileage reimbursement for round-trip car travel (calculated as 1356 miles multiplied by the 2006 IRS rate of \$.445 per mile, an amount generally equivalent to airfare and rental car expenses had Father flow to Youthcare and returned with Student); \$155.50 for two nights of hotel near Youthcare; \$80 for food (calculated as two days at \$40 per day). The total of the above travel costs is \$2,471.22. (Factual Findings 45, 46, 51, 53, 55, 58, 60, 61, and 65; Legal Conclusions 1, 19, 20, 22, and 30.)

37. Student is not entitled to reimbursement for the following expenses that Mother and Father incurred after Student enrolled in Youthcare: Student's clothing; travel expenses for siblings to travel to Youthcare at any time; travel expenses for Mother and Father's visits to Youthcare on days other than Parent Days; valet airport parking; gasoline charges incurred for failing to refuel a rental car before returning it and global positioning system rental charges. (Factual Findings 51 through 58, 62, and 65; Legal Conclusions 1, 25, 26 and 30.)

38. Finally, Student presented evidence at hearing regarding airfare expenses incurred for two therapeutic home visits by Student in April and May of 2007, and included this claim as part of his calculation of items for which he was owed interest. These visits were offered, and accepted, by Parents at an April 17, 2007 IEP team meeting; however, Mother and Father did not claim reimbursement for these expenses until hearing. Student

could have sought reimbursement for these expenses as they were incurred, but did not; therefore, Student's claim for interest fails. Reimbursement for these two airfares, without interest, will be included in the award to Student. The total amount of airfare for two home visits by Student was \$490.50. (Factual Findings 59 and 60.)

ORDER

Within 45 days of the date of this Order, the District shall reimburse Student \$35,819.58.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on Issue One and Issue Three only to the extent that the reasonable cost of food, airport parking and Student's transportation from Youthcare to home should have been included in the offer of FAPE. The District prevailed on all other issues.

RIGHT TO APPEAL THIS DECISION

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

DATED: January 18, 2008

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

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings
Special Education Division