

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

SIMI VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. N 2007120033

SIMI VALLEY UNIFIED SCHOOL DISTRICT,

v.

STUDENT.

OAH CASE NO. N 2008010898

DECISION

Administrative Law Judge Richard T. Breen, Office of Administrative Hearings (OAH), State of California, heard this matter in Simi Valley, California, on May 28, 29, 30, 2008 and June 2 and 3, 2008.

N. Jane DuBovy and Carolina Watts, Attorneys at Law, represented Student. Student attended the hearing with her Mother (Mother) and Father (Father).

Andrew Arczynski, Attorney at Law, represented Simi Valley Unified School District (District). District representative Dennis Carter attended the hearing on all days.

Student filed a Request for Due Process Hearing (Complaint) in OAH case number N2007120033 on December 3, 2007. Student's request for a continuance was granted on January 17, 2008. On January 29, 2008, the District filed a Complaint in OAH Case No. N2008010898. The District's unopposed motion to consolidate was granted on February 6, 2008. On April 7, 2008, Student was granted leave to amend her complaint, resetting all

timelines. At hearing, the parties were granted permission to file written closing arguments by June 30, 2008. Upon receipt of the written closing arguments the matter was submitted and the record was closed.

ISSUES

1. Whether Student was denied a FAPE from December 3, 2005, through December of 2007, because the District failed to:
 - a) Appropriately assess Student in all areas of suspected disability;
 - b) Hold IEP meetings regarding Student's lack of progress;
 - c) Have all required IEP team members at the IEP team meetings;
 - d) Have a sufficiently precise statement of Student's special education and related services in the October 20, 2006 IEP that included the frequency, duration and location of those services and the provision of an instructional aide;
 - e) Take into consideration Student's need for Braille or assistive technology instruction at the October 20, 2006 IEP;
 - f) Provide prior written notice regarding a recommendation that speech therapy was not needed at the October 12, 2007 IEP team meeting;
 - g) Offer appropriate goals and services to meet each of Student's unique needs;
 - h) Offer appropriate levels of related services;
 - i) Offer appropriate levels of assistive technology services;
 - j) Offer an appropriate placement and specialized instruction;
 - k) Offer an appropriate transition plan including appropriate levels of services and appropriate goals.
2. Whether the District denied Student a FAPE by failing to provide agreed-upon IEP services prior to the issuance of a December 27, 2007 "stay put" order.
3. Whether the District offered Student a FAPE in the October 12, 2007 IEP.
4. Whether the District provided Student with a FAPE because the terms of the

October 12, 2007 IEP were implemented.

5. Was Student properly exited from special education on December 20, 2007.

FACTUAL FINDINGS

1. Student turned 22 years old on October 26, 2007. At all relevant times she resided within the District and was eligible for special education under the primary category of visual impairment. The parties stipulated that Student was totally blind and had "significant cognitive delay." Student was born prematurely and experienced fine and gross motor delays as a child. Student had a history of medical disorders including scoliosis and swallowing and digestive problems. Student also had a seizure disorder that required constant monitoring. In the event of a seizure, the responsible adult with Student could use a special magnet to activate a nerve stimulator to ward off the seizure. Student has the support of loving parents whose concern and care for Student were evident throughout the hearing. Mother and Father had the legal power to make all decisions for Student because of her cognitive impairment.

2. Student was assessed by the California School for the Blind (CSB) on October 27 and 28, 1998. CSB recommended, in relevant part: 1) that Student participate in a functional skills curriculum with exposure to "real world" settings; 2) that Student be taught using her multiple senses such as touch; 3) that Student be taught basic concepts beginning with concepts related to her body and expanding outward; 4) that Student needed to work on awareness of texture and fine motor skills; and 5) that Student should be encouraged to be as independent as possible in daily living skills. In general, CSB recommended that Student would require repetition, practice and use of "backward chaining" (guiding a child through an entire task by starting with the result and working backward) in order to acquire new skills. CSB did not recommend that Student be taught Braille. CSB recommended that Student could be given tactile symbols such as a piece of chain from a playground swing to represent recess time at school.

3. CSB also recommended that Student use an assistive technology device, possibly with tactile buttons, that could talk for her. However, during IEP meetings, Mother and Father chose not to use assistive technology in order to encourage Student to use the speaking ability that she had.

4. At hearing, Father expressed his hope that Student would learn to live independently and hold some type of job. Mother and Father believed that they had been promised that Student would be provided with a one-to-one aide at all times, even after Student was no longer enrolled in school. According to Mother, Student required a one-to-one aide for information about the environment, to encourage her to participate in activities and to monitor for possible seizures. Mother and Father did not think that Student could function without an aide in adult day programs because she had relied on an aide while enrolled in school and had not sufficiently been transitioned to reduced dependence on an aide. Father believed that at a minimum, to transition out of school, Student required a transition period with an aide that she could trust.

5. Mother and Father both believed that Student should have learned Braille while enrolled in the District, first by learning the Braille alphabet and numbers and then progressing to grade two Braille, which substituted symbols for whole words. Mother and Father did not believe that Student could learn any Braille symbols without first learning the Braille alphabet. Mother believed that Student could eventually learn to read Braille signs while Father expressed his belief that Student could eventually learn to read books in Braille.

6. Father had a master's degree in special education and was a California credentialed special education teacher in another district. As part of his studies, Father had taken a course about transition plans. Father also had experience as a substitute teacher. Mother taught medical technology at a local adult school. At hearing, Mother and Father testified that they did not fully understand some aspects of the IEP process, and felt that

they had to consent to get services. However, their testimony on this point was not persuasive in light of the above and because at all times Mother and Father had been provided with notices of procedural safeguards.

7. Student was eligible for services under California's Lanterman Act and was a client of the Tri Counties Regional Center (TCRC). Snehah Zachariah (Zachariah) was Student's service coordinator from March of 2003 through December of 2006 and attended Student's annual IEP team meetings in October of 2004, 2005 and 2006. The services provided to Student from TCRC included assisting with the applications for, and funding, adult day programs. Zachariah's job as a service coordinator required her to be knowledgeable about available adult programs and the standards for admissions. Zachariah had provided Mother and Father with information on all of the programs being considered. Zachariah persuasively explained that a representative of a program provided by TCRC would only be required to attend a transition IEP after Mother and Father had made a choice of program. Zachariah's testimony was consistent with that of District personnel, who explained that programs such as ARC, the Braille Institute and the Foundation for the Junior Blind generally do not attend IEP team meetings to discuss transitions because if needed, a referral would originate with TCRC.

8. Transition planning was discussed at an IEP team meeting on October 8, 2004. At that meeting, TCRC representative Zachariah explained post-secondary program options for Student. Mother and Father were encouraged to look at programs such as the Cole Vocational Program (Cole), ARC and the Therapeutic Living Center (TLC). Cole, ARC and TLC were all vendors to TCRC and if Student attended, TCRC would pay for Student's attendance. The IEP team recommended that Cole and TLC were the most appropriate. The transition plan expressly stated, "Parents need to begin working with TCRC to investigate post-high school options for [Student] to help direct instruction in her last years of school toward her strongest areas of need in the areas of semi-independent

living, community access, and work.” The transition plan reflected that Student would continue with developing independent living skills through a functional skills curriculum, would participate in learning to use public transportation, and would have exposure to employment through two on-campus and one off-campus jobs. The IEP notes reflect that the District was willing to reconvene the IEP to develop functional goals that would align with the post-secondary program chosen by Mother and Father. The transition services in the IEP were reviewed and approved by parents at an IEP team meeting on January 7, 2005.

9. Julie Palmer (Palmer) taught Student in a SDC during the 2005-2006 school year. Palmer was an experienced educator with nearly 20 years experience as a special education teacher at the time she taught Student. Palmer had a master’s degree in special education and was credentialed to teach the severely handicapped. Palmer’s SDC consisted of 14-17 students, some of whom, like Student, required a one-to-one aide. Student was in the middle to lower range of cognitive ability compared to her classmates. The class was composed of students with a variety of disabilities including one student with visual impairment, some students with language impairments, and some students who were capable of carrying on conversations. Typical peer volunteer tutors participated in the class on a regular basis to provide social interaction and speech practice for the SDC students. Student’s aide was always encouraged to fade out as much as possible and only provide Student assistance when needed. Student was able to work with ratios of up to one aide to three students during art projects and did not require her aide to be close by when working with peer tutors.

10. District vision specialist Aaron Glaser (Glaser) provided vision services to Student prior to the fall semester of 2006. Glaser had been a credentialed teacher of the visually impaired since 1972 and had started working for the District in 1981. A teaching credential for visual impairment requires knowledge of Braille instruction. At the time of

hearing, Glaser was retired and working part-time. Glaser had taught Braille to between 6-10 totally blind children while employed with the District. Glaser concluded that teaching Student the Braille alphabet with an end toward reading Braille was not appropriate in light of Student's cognitive limitations and the greater need to teach Student functional skills. Glaser did not think teaching the Braille alphabet was appropriate because learning to read required the person to be able to conceptualize that what you are touching represents something else. At most, Glaser thought that Student might be able to acquire some understanding of whole Braille words. Based on Glaser's observations of Student during community based instruction at school, Glaser did not think Student could function independently in the community. Although Glaser did not agree that Braille was appropriate, he did work with Student on the restroom-distinguishing goals. In addition, Glaser labeled common items in Student's classroom with Braille labels so that Student could be exposed to Braille. Glaser needed to manually prompt Student to run her fingers over Braille surfaces.

11. Father did not believe that Student's cognitive abilities were as low as perceived by District personnel because in his experience, Student demonstrated a sense of humor and Father perceived that Student's cognitive level appeared lower because she had a delayed reaction when asked to do something. However, Father was not persuasive on this point because the parties stipulated that Student had "significant" cognitive delay, Student's operative IEPs described her as having "severe" cognitive delays, and, consistent with the testimony of District personnel who worked with Student, the operative IEPs described Student as requiring "full assistance and supervision to access her environment and perform her daily living skills." Father was also not persuasive on this point because parents provided the District with a July 16, 2007 letter from neurologist Peter K. Kim, M.D., stating, consistent with the opinions of District personnel, that Student "is incapacitated," "dependent on her parents," and that "In my opinion, her inability to care for herself will

not change in the future.”

12. As of December 3, 2005, Student’s operative IEP was dated October 21, 2005. This IEP placed Student in a special day class (SDC) within a District high school, with inclusion in general education classes for two periods per day. Student was provided the following related services: orientation and mobility training for two, 30-minute sessions per week; vision services for two, 30-minute sessions per week; speech therapy once a week for 60 minutes; adapted physical education four days per week for one period a day; and occupational therapy for 120 minutes per month.

13. The IEP notes reflect that Mother and Father had only visited one post-secondary program in the year since the October 8, 2004 IEP and intended to look at another program in the upcoming year. Zachariah, Student’s program coordinator from TCRC, attended the meeting, offered to arrange for Mother and Father to visit another program and provided information about a new adult day program that had opened in Simi Valley. The transition plan again emphasized that Mother and Father needed to work with TCRC to decide on a placement so that instruction could be tailored to that goal. The transition plan reflected that Student would continue with developing independent living skills through a functional skills curriculum, would participate in learning to use public transportation, and would have exposure to employment through six on-campus jobs and one off-campus job. The transition plan noted that Student was a client of TCRC. A line listing “other possible agencies to be considered” included CCS, the Braille Institute and the Foundation for the Junior Blind; however, as previously discussed, such agencies did not attend transition IEPs because ultimately, it would be TCRC that arranged for and funded Student’s post-secondary services.

14. TCRC service coordinator Zachariah believed that the Cole program in Oxnard or TLC in the San Fernando Valley were the most appropriate post-secondary placements for Student because they served the visually impaired. ARC was less

appropriate because there were no totally blind people there. Father liked the Cole Vocational Program, but was concerned about the possible one-hour travel time to the program.

15. At the October 21, 2005 IEP, Mother and Father agreed with the IEP team that a triennial assessment of Student was not needed because Student's needs were well known.

16. The October 21, 2005 IEP contained the following annual goals: a motor skills/mobility goal of full participation in APE; a vocational goal of reducing the need for prompting when performing job tasks; a vocational goal of reducing the frequency of hugging and kissing co-workers; a vocational goal of following instructions; a vocational goal of increasing Student's ability to count items accurately; a functional/academic goal of learning to distinguish between the Braille symbols for "Men" and "Women" both in class and the community; an orientation/mobility goal of increasing Student's ability to travel in the community with a human guide; a communication goal of increasing appropriate verbal greetings; a communication goal of increasing Student's ability to verbally describe her own actions; a communication goal of increasing Student's receptive understanding of concepts such as full/empty, in front of/in back of; a communication goal of replacing a gesture and whimper with speech when Student needed to use the restroom; a self-care/independent living goal of clearing the dining table with minimal prompts; a self-care/independent living goal of brushing her teeth with reduced physical prompting; a self-help/independent living goal of finding her own money when paying for items at a store; a self-care/independent living goal of increasing independent chewing and swallowing; a self-care/independent living goal of pouring liquids accurately. All of the goals were based on observed present levels of performance, contained benchmarks, and were measurable. The goals reflected Student's functional skills curriculum and were appropriate for Student's abilities. The self help/independent living goals of clearing the

table, brushing teeth, locating money and properly eating and chewing were assigned in part to the occupational therapist.

17. The present levels of performance noted that teaching Student the Braille symbols for familiar items in the classroom had been attempted with little success. At the IEP team meeting both SDC teacher Palmer and vision specialist Glaser expressed that they did not believe that Student had sufficient cognitive ability, tactile sense, or sense of space to learn Braille letters. Palmer and Glaser chose to have Student attempt Braille with whole words because Student did not have sufficient cognitive skills to connect Braille letters with the formation of the letter sound. However, the IEP team included the Braille goal at the request of Mother and Father. Palmer explained that the focus of the goal was to have Student understand that a Braille symbol stood for something concrete. Palmer believed that Student needed to work on being less prompt dependent with an aide, but did not recommend reducing the provision of a one-to-one aide due to the safety issues caused by Student's seizure disorder.

18. Student made progress on the goals from the October 21, 2005 IEP. By October of 2006, Student met the following annual goals: full participation in APE; the vocational goal of reducing the frequency of hugging and kissing co-workers; the communication goal of using an appropriate greeting; the orientation and mobility goal of traveling with a human guide; and the self-care/independent living goal of clearing the table with prompting. Student met the self-care/independent living goal of pouring, but only with maximum assistance. Student made progress, but did not meet, the following annual goals in the October 21, 2005 IEP: the vocational goal of reducing the need for prompting; the vocational goal of following simple, short directions; the vocational goal of accurately counting objects; the functional goal of differentiating between the Braille symbols for "Men" and "Women"; the communication goal of describing her own actions; the receptive communication goal of understanding concepts like in front of/in back of;

the communication goal of using appropriate verbalization to request the restroom; the self-care/independent living goal of brushing her teeth with verbal prompting; the self-care/independent living goal of finding her own wallet; and the self-care/independent living goal of chewing and swallowing food. Palmer described that Student did not make much progress on distinguishing the restroom, even when using the triangle ("Men") and circle ("Women") symbols on restroom doors.

19. Prior to December 20, 2007, Catherine Hunnewell (Hunnewell) provided daily one-to-one instructional aide support to Student for approximately eight years. Hunnewell provided Student with the support she needed, but would fade back to encourage Student to be more independent whenever possible, particularly during the times when Student was working with a peer tutor. Hunnewell generally worked on all of the goals in Student's IEPs, in conjunction with the classroom teacher and/or service providers, and participated in IEP team meetings. Other aides worked with Student without incident during the times Hunnewell was absent.

20. Lynn Brown (Brown) provided speech and language services to Student from the fall semester of 2006 through the time of the October 12, 2007 IEP, after which she provided the consult services set forth in that IEP. Brown had a master's degree in speech pathology and audiology and had almost 25 years of experience in the field at the time she provided services to Student.

21. When she started working with Student in the fall of 2006, Brown believed that the speech goals and levels of services provided by the October of 2005 IEP were appropriate. Brown noted Student's significant cognitive delay and that Student was very selective about who she would speak to and when. Student rarely used spontaneous speech and when she did so her speech consisted of repeated phrases. Accordingly, Student required a lot of prompting to implement speech goals. Based on her experience working with Student, Brown did not believe that any level of increased speech therapy

would have increased Student's speech abilities. Brown was aware that parents reported a greater level of speech at home, which Brown plausibly explained was likely due to Student being more comfortable in that environment.

22. Brown persuasively explained that standardized speech assessment would not have been appropriate to use with Student in light of her cognitive delays and blindness. Standardized speech assessments frequently require pointing to a picture or responding with speech, making the tests inappropriate for Student. Assessment by observation was appropriate for Student.

23. In all of her SDC classrooms, Student had been provided with AT devices at various times such as a "hip talker," specialized switches, software, computer touchscreens, and a tape player for books on tape. Brown concluded that during the relevant time periods, AT devices such as the "hip talker" would not have been helpful with Student's communication needs because the devices would require use of tactile symbols and Student had not been successful with Braille symbols. More importantly, if Student was capable of producing speech, it was more important to encourage her to continue to use that skill. Brown's testimony on all points was not refuted at hearing by any other speech language pathologist.

24 Cynthia Hawthorne (Hawthorne) taught Student in an SDC from the fall semester of 2006 until the time Student withdrew from school in February of 2008. Hawthorne was a credentialed special education teacher, who, prior to achieving her teaching credentials, had worked as an instructional aide for students with severe disabilities such as blindness, autism and emotional disturbance. Based on Student's performance in her classroom, Hawthorne concluded that the present levels of performance in the October 21, 2005 IEP had been accurate.

25. Hawthorne's SDC had a total of 15 students with 12 instructional aides and assistance from 35-40 peer tutors. Every aide in the classroom was trained to work with

Student and to be aware of Student's medical needs. Although Student had a great rapport with aide Hunnewell, Student would work with other aides when Hunnewell was absent.

26. On October 11 and 12, 2006, Hawthorne assessed Student's transition needs using the YES – Knowing Yourself inventory of career interests; the Workplace Employment Skills Summary (WESS) and the Learning Style Preference Inventory. Hawthorne explained that the transition assessments such as the WESS, the Learning Style Preference and the YES – Getting to Know Yourself were not standardized assessments, but instead were questionnaires that were generally given to the student. Although the WESS instructions said it could be used for progress monitoring, it was also proper to use the WESS to establish baselines. Hawthorne plausibly explained that Student was not capable of answering the questions on the questionnaires so the data was based on teacher observation. No evidence was produced that had Student or parents provided input, the resulting transition plan would be different. Prior to the October 12, 2007 IEP team meeting, the October of 2006 assessments were reviewed and Student was observed at jobsites.

27. Hawthorne persuasively explained that additional assessments of Student were not required because Student was being provided the services she needed and the impact of Student's disabilities had not changed. Hawthorne also persuasively explained that more services would not necessarily have resulted in greater improvements for Student because Student's performance fluctuated based on how she was feeling and it also generally took Student a lot of repetition to acquire a skill.

28. Cynthia Page (Page) worked with Student on her employment skills goals. Page was a credentialed special education teacher, who had experience working with severely disabled students between the ages of 18 and 22, including totally blind Students. Page observed Student in job sites such as office cleaning, restocking dog waste bags in a

public park and Student's favorite, a coffee shop. Page described that Student needed physical and verbal prompts to perform all work tasks. For example, Student required prompting to wipe a table and prompting to let go of the towel when finished wiping. Page perceived that Student was not capable of working without an aide due to her blindness and safety issues and that at the time Student was just beginning to understand what was expected of her in work situations.

29. TCRC service coordinator Zachariah met with Mother prior to the October of 2006 IEP. At that time, Mother expressed to Zachariah that she was leaning toward placing Student in the ARC program because it was next to Mother's workplace.

30. An IEP team meeting was held on October 20, 2006. The IEP contained present levels of performance that were drafted based on input from Hawthorne, all DIS providers and parents.

31. This IEP placed Student in a special day class within a District high school, with inclusion in general education classrooms or settings for 28 percent of the day, including two general education electives such as dance, comedy or drama. Student was provided the following related services: orientation and mobility training for 60 minutes a week; vision services for two, 30-minute sessions a week; speech and language therapist direct consult twice a month for 15 minutes; and occupational therapy direct consult for 90 minutes a month. Student's participation in off-site work programs started at one day per week for two hours and increased to two days per for two to three hours. The use of assistive technology and Braille was discussed at the meeting. The IEP did not directly mention provision of a one-to-one aide, but did state that Student "needs adult supervision and assistance the entire school day." Father initialed that he had received copies of all the reports discussed at the meeting. Mother and father consented to the IEP at the time. Father conceded at hearing that he understood the placement and the frequency, location and duration of the services offered.

32. The October 20, 2006 IEP included a transition plan. Student would continue in a functional skills curriculum with an emphasis on job-specific skills, self-care, daily living skills and street safety. The desired outcomes included living with parents within one year after graduation, participating in adult day program within one year of graduation and participating in supported employment within two years of graduation. TCRC was listed as an agency that also had responsibility for Student, while the Braille Institute was listed as another possible agency for parents to consider.

33. The October 20, 2006 IEP contained the following goals: an orientation and mobility/independent living goal of putting her cane in a shopping cart and pushing it in a store with physical and verbal prompts; a vocational goal that Student would identify clean/dirty and wet/dry and complete cleaning tasks with support; a recreation/leisure goal of activating her own books on tape using raised symbols on the tape recorder; a self-care/independent living goal of choosing a leisure activity; self-care/independent living goal of preparing a snack by spreading an item on crackers or bread; a self-care/independent living goal of putting on her own tap shoes and street shoes with minimal physical prompting; an independent living skills/functional goal of setting the table; and a transitional/vocational goal of reducing prompts to start a task. All of the goals were based on observed present levels of performance and were measurable. The goals reflected Student's functional skills curriculum and were appropriate for Student's abilities. The IEP team meeting notes reflect that the team discussed that Student was being exposed to reading the Braille signs on restrooms. The self-help goals of preparing a snack, putting on shoes, and setting the table were assigned to, among others, the occupational therapist.

34. By October of 2007, Student made progress on the annual goals from the October 20, 2006 IEP. Student met the following annual goals: with maximum physical prompting, the orientation and mobility goal of putting her cane in a shopping cart and

pushing it; the self-care/independent living goal of activating a tape player by using a raised symbol on a button; the self-care/independent living goal of choosing a leisure activity; the vocational goal of starting an activity with fewer prompts; and the vocational goal of being able to identify clean/dirty and wet/dry and completing a task when prompted. Student made progress on the following annual goals from the October 20, 2006 IEP: the self-care/independent living goal of preparing food by spreading an item on bread or crackers; the self-care/independent living goal of putting on shoes; and the independent living and functional goal of pouring.

35. At the October 20, 2006 IEP team meeting, TCRC representative Zachariah could not stay for the entire meeting. Transition needs were discussed first and Zachariah gave her input and answered all questions prior to her departure. The IEP meeting notes reflect that this occurred and do not reflect any objection by parents to this procedure. No evidence was offered that had Zachariah stayed longer, the results of the IEP team meeting would have been different.

36. Angela DeSantis (DeSantis) was a teacher of the visually impaired who provided vision services to Student during the spring, summer and fall semesters of 2007. Prior to providing services to Student, DeSantis obtained input from Glaser, Student's aide Hunnewell, teacher Hawthorne and Mother. DeSantis informally performed a learning media assessment by observing Student in different settings to see how Student accessed her environment. There is no standardized learning media assessment and no standardized test for Braille readiness. With a totally blind person, the learning media assessment consists of observation to determine the degree that the person learns through tactile or auditory means. Further assessment would not have revealed anything about Student's abilities that was not already known. DeSantis was aware that the CSB report did not recommend using Braille but continued to expose Student to "functional" whole word Braille and the Braille alphabet and numbers, which were on Student's desk.

Student was resistant to touching the Braille. Student did not generally progress beyond touching the Braille with prompting during activities such as restroom trips or pouring by following a Braille recipe, to distinguishing between two Braille figures. Aide Hunnewell perceived that Student did not master differentiating restroom signs, but instead would guess at the answer. From working with Student, DeSantis concluded that although Student might be able to learn some functional Braille, Student did not have the cognitive ability to learn advanced Braille. A Braille writer, which was like a typewriter with only six keys, was available in the classroom. DeSantis exposed Student to it, but did not believe that Student could learn to use it effectively because it required memorization of how to form Braille letters. Overall, DeSantis was persuasive in her opinion that tactile and auditory training in functional skills was more important for Student than trying to learn type-one Braille and that additional Braille instruction would not have yielded better results.

37. Occupational therapist Krista Minnis (OT Minnis) provided occupational therapy services to Student beginning in September of 2007. OT Minnis was employed by the Ventura County Office of Education. OT Minnis reviewed the October 20, 2006 IEP before working with Student. OT Minnis thought the present levels of performance and goals in the IEP were accurate and that the goals were appropriate given Student's needs. In particular, OT Minnis believed that the goals were appropriate because they were realistic and achievable. OT Minnis worked with Student on the food preparation goal using an audible cue for pouring and would also prompt Student to run her fingers over a Braille recipe while doing the activity. OT Minnis provided Student with 90 minutes per week of occupational therapy, an amount that she thought met Student's needs. OT Minnis did not believe that Student could ever live independently and instead would always require some type of adult assistance. No contrary expert opinion from another occupational therapist was presented at hearing.

38. An IEP team meeting was held on October 12, 2007. Classroom personnel reported at the time, consistent with Mother's testimony at hearing, that Student was using decreased verbalizations and more echolalia following a seizure in the summer of 2007. Student's records reflected that Student made slow gains year after year consistent with her cognitive abilities regardless of whether the services were rendered as pull-out or push-in. Speech therapist Brown recommended to the IEP team that given Student's needs for functional speech practice and repetition, Student was better served by having her speech goals worked on throughout the day by the classroom teacher and Student's aide. Brown was able to supervise aide Hunnewell in how to appropriately work on the speech goals in Student's IEP and would provide consult services. The IEP team agreed with this decision and Mother and Father consented to the change in speech services. Although Brown had discussed the possibility of reducing speech services with SDC teacher Hawthorne, no decision was made until the IEP team meeting such that no written notice could have been given to parents.

39. The October 12, 2007 IEP offered Student the following placement and services: an SDC in a District high school, with inclusion in general education classes such as dance for 54 percent of the school day; orientation and mobility training for two, 30-minute sessions per week; vision services for two, 30-minute sessions per week; and occupational therapy direct consult for 90 minutes per month. The IEP reflected that speech therapy consultation would be available as needed and that Student required adult assistance and supervision throughout the school day.

40. The October 12, 2007 IEP expressly stated that Student would be turning 22 on October 26, 2007, and as a result, would be ineligible for special education after December 20, 2007, the last day of school during the 2007 year. The District's fiscal year ran from July 1, 2007 through June 30, 2008.

41. The October 12, 2007 IEP included a transition plan. Student would continue

in a functional skills curriculum with an emphasis on job-specific skills, self-care, daily living skills and street safety. The desired outcomes included living with parents within one year after graduation with participation in supported recreation, participating in an adult day program within one year of graduation, and participating in supported employment within two years of graduation. TCRC was listed as an agency that also had responsibility for Student, while the Braille Institute was listed as another possible agency to be considered by parents. Along with continued development of cooking, self-care and daily living skills, the plan contemplated that Student would make a portfolio of work to take with her to the adult program that she would attend. The transition plan reflected that no new transition assessments had been performed and that the plan was based on the October of 2006 transition assessments.

42. Vision specialist DeSantis was a member of the December 12, 2007 IEP team. DeSantis persuasively testified that the drink preparation goal was appropriate given that Student required maximum assistance with non-preferred food preparation tasks. The independent living goal of making popcorn was also appropriate because it included exposure to Braille directions and tactile markings on the microwave oven. The independent living goal of putting on shoes was also appropriate because it was both challenging to Student and functional. DeSantis believed that the level of vision services provided to Student was appropriate because the vision programs were also implemented by Student's one-to-one aide and the classroom teacher.

43. The October 12, 2007 IEP contained the following goals: a transition goal that Student would visit two adult day programs with the support of District staff; a transition goal that Student, with help from a teacher or aide, would develop a portfolio of her work-related and community based instruction activities; an independent living goal of preparing a drink to share with others given maximum verbal and physical prompts; an independent living goal of preparing, with maximum verbal and physical prompts,

microwave popcorn using Braille instructions and raised dots on the microwave; a self care/independent living goal of putting on shoes with maximal verbal and moderate physical prompts; a mobility/independent living goal of putting her cane in a shopping cart with verbal prompts; and a mobility/independent living goal of pushing a shopping cart with verbal prompts. Hawthorne accurately compiled the present levels of performance from her own observations, aide Hunnewell's observations, the input of DIS providers and input from parents. All of the goals were measurable. The goals reflected Student's functional skills curriculum and were appropriate for Student's abilities. The IEP team meeting notes reflect that the team discussed that Student was still being exposed to Braille. SDC teacher Hawthorne, who had extensive experience teaching Student, was persuasive in explaining that the goals were appropriate. The goals continued to emphasize independent living skills and included a goal that Student visit another adult program, which was particularly important given that Student was scheduled to exit special education on December 20, 2007. The self-help goals of preparing a drink and putting on shoes were assigned, in part, to the occupational therapist.

44. Mother and Father signed the October 12, 2007 IEP indicating consent to its implementation. Mother initialed boxes indicating that she had received a notice of procedural safeguards, had received all reports that were discussed, and that she participated in the IEP.

45. Although Student did not sign the October 20, 2006 and October 12, 2007 IEPs, she attended both meetings. This was confirmed by SDC teacher Hawthorne who had a specific recollection that Student assisted in preparing juice and cookies for the meetings.

46. According to Mother, day programs such as the ARC program required participants to be able to be supervised in a 4-to-one ratio of participants to staff. Mother expressed that had she known about this at the time of the IEPs, she would have

requested a goal to fade Student's reliance on a one-to-one aide. However, the evidence at hearing did not establish that Student could not be placed in a program based on this requirement. To the contrary, TCRC had the ability to provide an aide if needed; however, at the time of hearing, Mother and Father had yet to select a particular program for Student to attend.

47. At hearing, Mother and Father expressed interest in Student attending TLC, a program that had been discussed at an IEP meeting held in October of 2004. TLC had both a day program and a residential facility. However, as of the date of hearing, Mother had yet to visit this program and Father testified that they were waiting to hear from the program. TLC had not asked for any particular assessments to have been performed prior to considering Student's application. A representative from TLC was not called as a witness at hearing.

48. Student tried the ARC program in Simi Valley during her final semester at school. Student attended the program twice a week, for a few hours at a time with support from her District-provided aide. Mother rejected ARC's offer to have Student try their program without an aide for one month. Mother did not trust ARC's conclusion that they could serve Student without a one-to-one aide because ARC had worked with the visually impaired but not the totally blind and because ARC did not perform any assessments before recommending that Student try the program. A representative of the ARC program was not called as a witness at the hearing.

49. In support of Student's transition plan, speech therapist Brown visited ARC in December of 2007 at Father's request to discuss Student's needs such as the need to make Student aware that you are talking to her and the need to prompt Student. ARC personnel stated that they could continue to encourage Student's speech development. Brown saw Student participating.

50. All of Student's operative IEPs contained an emergency health plan for

seizures and assisted transportation. No evidence was produced that these provisions were inappropriate.

51. On December 6, 2007, Student's teacher Hawthorne helped Student sign an "Exit Summary." Student was not capable of understanding what she was signing. The "Exit Summary" document was not an IEP, but instead was a summary of Student's present levels of performance upon exiting school and also provided information about Student's preferences and supports that might be helpful to those who would start working with Student. The last page of the "Exit Summary" was a contact list of agencies that served adults with disabilities. Hawthorne had Student "sign" the document to give her the experience of doing it, not because Student's signature was legally required.

52. At a meeting with TCRC on December 7, 2007, parents were informed that ARC believed that they could meet Student's needs without a one-to-one aide. ARC has no assessment requirements prior to acceptance. Zachariah explained at hearing that TCRC could provide funding if Student required a one-to-one aide in an adult program, and the adult program recommended it.

53. On December 13, 2007, Mother and Father sent a letter to the District asking for "assessments in the areas of training, education, employment, daily living skills, and a functional vocational evaluation" as well as a "learning media assessment." Mother and Father attached a form for a "functional vision assessment" to the letter and indicated that they intended for the District to use the form for the "learning media assessment." On December 18, 2007, the District sent Mother and Father a letter stating that their assessment request was being denied on the basis that the "functional vision assessment" form did not apply to Student because she was totally blind, that the remaining assessment requests were addressed by the information in the December 6, 2007 "exit summary," and that Student did not require assessments because she was exiting special education as of December 20, 2007.

54. District schools were on holiday break from December 21, 2007 through December 31, 2007.

55. After Student filed for due process and was in "stay put," she received the services set forth in the October 12, 2007 IEP. Despite her great affection for Student, one-to-one aide Hunnewell chose to take a longer-duration classroom aide position with the District rather than the uncertain position of continuing as Student's aide while Student was under "stay put." Student was provided one-to-one aide services from other aides that she was familiar with. Nothing in the October 12, 2007 IEP specified that a particular aide would be provided.

56. In February of 2008, Student became agitated at school and waived her arms and made inappropriate vocalizations. On February 8, 2008, Mother picked Student up from school and took her home. Student did not return to school after this, although the District was prepared and willing to serve Student under "stay put."

57. As of the date of the hearing, Mother and Father had not enrolled Student in an adult day program.

CONCLUSIONS OF LAW

STATUTE OF LIMITATIONS

1. Due process complaints filed after October 9, 2006, are subject to a two-year statute of limitations. (20 U.S.C. §§ 1415(b)(6)(B), 1415(f)(3)(C); 34 C.F.R. 300.507(a)(2) (2006);¹ 34 C.F.R. 300.511(e); Ed. Code, § 56505, subs. (l) & (n).)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

BURDEN OF PROOF

2. The petitioning party has the burden of persuasion. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Therefore, Student has the burden of persuasion for the issues raised in OAH case number N2007120033 (Issues 1 and 2), and the District has the burden of persuasion for the issues raised in OAH case number N200810898 (Issues 3, 4, and 5).

DEFINITION OF FAPE

3. 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(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(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].)

4. In *Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) 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.)

5. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of FAPE, or caused a deprivation of educational benefits. (34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (Target Range))

ISSUE 1A – ASSESSMENTS

6. Student contends that she was denied a FAPE because the District did not conduct appropriate assessments in all areas of suspected disability from December 3, 2005 (two years prior to the filing of her Complaint) through December of 2007. Specifically, Student contends that the District should have performed standardized assessments in all areas during the statute of limitations period.

7. For purposes of evaluating a child for special education eligibility, the District must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. §

1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) After a child has been deemed eligible for special education, reassessments may be performed if warranted by the child's educational needs or related services needs. (34 C.F.R. § 300.303(a)(1); 34 C.F.R § 300.536(b) (1999); Ed. Code, § 56381, subd. (a)(1).) Absent an agreement to the contrary between a school district and a student's parents, reassessments must not occur more than once a year, or more than three years apart. (34 C.F.R. 300.303(b)(1); Ed. Code, § 56381, subd. (a)(2).) Assessments are not required prior to a student exiting special education because they have met the maximum age of eligibility under state law. (34 C.F.R. § 300.306(e)(2).)

8. As discussed above, 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).) FAPE means special education and related services that are designed to meet the student's unique needs, comport with the student's IEP, and are reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Gregory K. v. Longview School District, supra*, 811 F.2d at p. 1314.)

9. Here, Student has not met her burden of persuasion. As of October of 2005, parents agreed with District personnel that a triennial reassessment of Student was not required. This constitutes an agreement to the contrary regarding the frequency of assessments under 34 Code of Federal Regulations part 300.303(b)(1) and Education Code section 56381, subdivision (a)(2), such that the District had no duty to assess Student at the time. As to whether further assessments were needed based on changes in Student's

educational needs, District personnel plausibly explained that because Student was blind, significantly cognitively impaired, suffered from a seizure disorder and had physical limitations due to scoliosis and digestion problems, Student's needs would remain the same and could be determined without formal reassessment. No evidence was produced as to what, if any, cognitive assessments could have been performed that would yield accurate information. Vision specialist DeSantis performed a learning media assessment of Student by observation when she began to work with her. Transition assessments based on observation were given in the fall of 2006 that were appropriate for Student given her limitations. The only reported change in Student was a report that following a seizure in the summer of 2007, Student appeared to use less language and more echolalia. However, the uncontradicted testimony of speech therapist Brown was that Student's speech abilities would not increase regardless of the amount of therapy Student was given. In light of the above, Student failed to meet her burden of demonstrating that she was denied a FAPE because she was not appropriately assessed in all areas of disability. (Factual Findings 1-3, 10, 11, 15, 17, 20-23, 26-28, 36, 37, 47, 53; Legal Conclusions 1-8.)

ISSUE 1B – IEP TEAM MEETINGS FOR LACK OF PROGRESS

10. Student contends that she was denied a FAPE because IEP team meetings should have been held more frequently than once a year because Student was not making progress on her goals. Specifically, Student contends that because she was not making progress on goals related to independent living, IEP team meetings should have been held and more services should have been offered.

11. A school district must ensure that the IEP team revises the IEP, as appropriate, to address "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. § 300.324(b)(2).) California law provides that an IEP team "shall meet" whenever "[t]he pupil demonstrates a lack of anticipated progress." (Ed. Code, § 56343, subd. (b).)

12. Here, contrary to Student's contentions, she made sufficient progress on her goals such that additional IEP team meetings were not warranted. For example, Student met goals from the October 21, 2005 IEP related to appropriate work behavior, orientation and mobility with a human guide, communicating with an appropriate greeting and clearing the table with prompting. Although Student made slow progress, she did make progress on goals related to reducing the need for prompting, expressive and receptive communication goals, self-care and independent living goals of brushing her teeth and chewing and swallowing food. Similarly, Student made progress on her goals from the October 20, 2006 IEP including meeting goals such as independently starting her tape player; reduced reliance on prompting, making a choice of leisure activity and being able to distinguish whether a table required cleaning. During that same year, Student made some progress, but did not meet goals in the areas of preparing food and putting on her shoes. The evidence showed that at all times, Student's progress was consistent with her present levels of performance and realistic performance expectations given Student's disabilities. Moreover, the evidence presented at hearing did not support a finding that had Student received more services, Student's progress would have been different. In light of the above, Student failed to meet her burden of persuasion on this claim. (Factual Findings 1, 10, 11, 16-18, 21, 23, 27, 28, 33, 34, 36, 37, 51; Legal Conclusions 1-5, 10, 11.)

ISSUE IC – REQUIRED IEP TEAM MEMBERS

13. Student contends that the District violated her procedural rights because she should have been invited to participate in IEP team meetings held on October 20, 2006 and October 12, 2007. In addition, Student contends that her procedural rights were violated because no agencies other than the TCRC were invited to participate in the transition planning discussions at the same IEP team meetings. Student also contends that she was procedurally denied a FAPE because an IEP was held on December 20, 2007 with only Student and a teacher. Student contends that for an IEP meeting to have been held

on December 20, 2007, both a parent and a District representative were required.

14. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].) The person with a disability must be invited to the IEP team meeting if a purpose of the meeting is to consider postsecondary goals and transition services. (34 C.F.R. § 300.321(b)(1); Ed. Code, § 56341, subd (d)(1).) If the person with a disability does not attend the IEP team meeting, then the school district must take steps to ensure that the individual's preferences and interests are considered. (34 C.F.R. § 300.321(b)(2); Ed. Code, § 56341, subd (d)(2).) In implementing the transition discussion of post-secondary goals and transition services, the school district must invite, to "the extent appropriate...a representative of any participating agency that is likely to be responsible for providing or paying for transition services." (34 C.F.R. § 300.321(b)(3); Ed. Code, § 56341, subd (d)(3).)

15. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a) (2006); 34 C.F.R. § 345 (1999); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693;

Fuhrmann v. East Hanover Bd. of Educ. (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

16. As discussed in Legal Conclusion 5, above, a denial of FAPE may only be shown if a procedural violation 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.

17. Here, at all times, the appropriate transition agency was present at the IEP team meetings. The TCRC was the entity responsible for coordinating and paying for the adult program that Student would attend after leaving special education within the District. The evidence established that TCRC service coordinator Zachariah had information about all programs being considered. Further, agencies that contracted with TCRC to provide services did not generally attend IEP team meetings because it was the TCRC and not the agency where Student was ultimately placed that would be responsible for coordinating and funding services. There was no evidence produced at hearing regarding what, if any, adult program would have been available from the Braille Institute or what, if any, additional information could have been provided to Student's parents other than that provided by Zachariah. Mother and Father expressed a preference at hearing for the ARC and TLC programs, and a concern about the distance of the Cole program in Oxnard. These facts demonstrate that all appropriate IEP team members were in attendance at the relevant IEPs, and that Student failed to demonstrate how having TCRC rather than other agencies at the meetings impacted Mother and Father's ability to participate in the IEP team meetings or resulted in a deprivation of educational benefit to Student. (Factual Findings 1, 6-8, 13, 14, 29, 32, 35, 41, 44-49, 52, 57; Legal Conclusions 1-5, 13-16.)

18. To the extent Student contends that she was denied sufficient input into the transition plan, her contention also fails. The evidence established that Student was in

attendance at the October 20, 2006 and October 12, 2007 IEP team meetings. However, parents had the legal right to make all decisions for Student and no evidence was produced at hearing as to what, if any, difference would have resulted in the transition planning had Student been asked about it. Similarly, the evidence demonstrated that it was appropriate to assess Student's transition needs through observation rather than interview in light of Student's cognitive limitations. No evidence was produced regarding what, if anything, was inaccurate about the types of career inventories and ability inventories about Student that were filled out as part of the transition assessments. Student's claim on this basis fails as well. (Factual Findings 1, 6, 7, 26-29, 32, 35, 41, 43, 45-49, 52, 57; Legal Conclusions 1-5, 13-16.)

19. Finally, Student also contends that her procedural rights were violated because on December 20, 2007, a teacher assisted her to sign an "Exit Summary" document. According to Student, the presentation of the "Exit Summary" should have been conducted under the procedural rules related to IEP team meetings. As discussed below, Student is incorrect.

20. When a student is no longer eligible for special education because he or she has reached the maximum eligibility age, the local education agency is required to provide a summary of "academic achievement and functional performance" including recommendations on how to assist the student in meeting his or her post-secondary educational goals. (20 U.S.C. § 1414(c)(5)(B)(ii); Ed. Code, § 56381, subd. (h)(2).) There is no requirement that such a summary be prepared with parent input, be presented at an IEP team meeting, or be signed by the student or educational rights holder. (*Ibid.*)

21. In the instant case, Student's teacher plausibly explained that Student was assisted in signing the "Exit Summary" so that Student could have the experience of signing a document. Having Student "sign" the document was a harmless way of marking the occasion of Student's last day in school. There is no authority for the proposition that

the procedural protections of an IEP team meeting apply to providing a student with an exit summary. Accordingly, this part of Student's claim also fails. (Factual Findings 51; Legal Conclusions 1-5, 20.)

ISSUE 1D – IEP DESCRIPTIONS OF RELATED SERVICES

22. Student contends that the October 20, 2006 IEP failed to contain sufficient descriptions of the special education and related services being offered to Student. In particular, Student contends that the IEP was deficient because it failed to: contain a statement that an instructional assistant would be provided; include information about the location, frequency and durations of services; and, contain a description of the educational placement. As discussed below, this contention fails.

23. By definition, an IEP includes, in relevant part, a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include: a projected start date for services and modifications; and, the anticipated frequency, location and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included in the IEP and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code, § 56345, subds. (h) & (i).)

24. After a student turns 16, an IEP must also include: 1) "Appropriate measureable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills"; and 2) "The transition services (including courses of study) needed to assist the child in reaching those goals." (34 C.F.R. 300.320(b); Ed. Code, § 56345, subd. (a)(8).)

25. To prevail on a claim that an IEP was procedurally defective, Student must

show that the procedural error interfered with parents' ability to participate in the IEP process or deprived Student of an educational benefit. (Legal Conclusion 5.)

26. Here, on its cover page, the October 20, 2006 IEP, contained full descriptions of Student's placement, and the frequency, duration and location of all services. Although a one-to-one aide was not listed on that page, adult supervision was mentioned in the IEP and there is no dispute that Student was actually provided with aide Hunnewell's services while the IEP was in effect. Father admitted at hearing that he understood the terms of the offer. Accordingly, Student failed to meet her burden of demonstrating that the IEP was defective and/or that as a result parents' ability to participate in the IEP process was infringed or Student suffered a deprivation of educational benefit. (Factual Findings 19, 30-33; Legal Conclusions 1-5, 23-25.)

ISSUE 1E – CONSIDERATION OF BRAILLE AND ASSISTIVE TECHNOLOGY

27. Student contends that she was denied a FAPE because the October 20, 2006 IEP team meeting did not include consideration of Student's need for assistive technology or Braille instruction. As discussed below, this contention fails.

28. An IEP team must consider whether an eligible student needs assistive technology and must consider Braille instruction for blind or visually impaired students. (20 U.S.C. § 1414(d)(3); (a)(2)(iii) & (v); 34 C.F.R. § 300.324(a)(iii), (v); Ed. Code, § 56341.1, subds. (b)(3), (5).) The IEP is not required to consider Braille instruction, if the IEP team determines, after assessing the student in reading and writing skills, needs and/or future needs, and appropriate reading and writing media, that instruction in Braille is not appropriate. (Ed. Code, § 56341.1, subd. (a)(3).) There is no requirement that consideration of these methodologies and related services be reflected in the IEP document. (See 20 U.S.C. § 1414(d); 34 C.F.R. § 300.320(a); Ed. Code, § 56345.) Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included in the IEP and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. §

300.320(d); Ed. Code, § 56345, subds. (h), (i).) "Assistive technology device" is defined as "any item, piece of equipment or product system [other than a surgically implanted device] . . . that is used to increase, maintain or improve functional capabilities of an individual with exceptional needs." (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

29. Here, although an IEP team must consider a visually impaired student's need for Braille and/or assistive technology, Student has not cited any authority demonstrating that evidence of such consideration must be included in the IEP document itself. More importantly, the evidence established that these factors were considered. In particular, the IEP notes show that Student's progress on learning Braille symbols was discussed and that "functional skills materials [were] provided in Braille at request of parent." In addition, the IEP shows that Student was eligible for assistive technology and that adapted software would be provided as needed. District personnel confirmed that Braille and assistive technology were actually used in the classroom. Accordingly, Student did not meet her burden of demonstrating that she was denied a FAPE on this ground. (Factual Findings 23, 30-33, 36, 37; Legal Conclusions 1-5, 27, 28.)

ISSUE 1F – PRIOR WRITTEN NOTICE

30. Student contends that she was denied a FAPE because the District failed to provide her with prior written notice that the IEP team would recommend a reduction of speech and language therapy at the October 12, 2007 IEP team meeting. As discussed below, this claim is meritless.

31. Parents must be given written notice a reasonable time before the public agency proposes to, or refused to, initiate or change the identification, evaluation, educational placement or provision of FAPE to a child. (20 U.S.C. § 1415(b) & (c); 34 C.F.R. 300.503(a); Ed. Code, § 56500.4.) The notice must include: a description of the proposed action; an explanation of why the agency proposes to, or refuses to, act; a description of the assessments or reports supporting the action; a statement that parents have

procedural rights; sources for parents to consult for assistance regarding the notice; a description of other options considered by the IEP team and why those options were rejected; and a description of any other factors relevant to the agency decision. (20 U.S.C. § 1415(b) & (c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.) As discussed in Legal Conclusion 5, above, a denial of FAPE may only be shown if a procedural violation significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE, or caused a deprivation of educational benefits.

32. Here, the evidence showed that written notice regarding speech and language services was not required prior to the October 12, 2007 IEP team meeting. A final decision regarding the level of speech and language service was not made until the IEP team meeting itself, with the input and the consent of parents. Accordingly, no prior written notice was required as the IEP document itself provided the required notice of the recommended change in Student's speech and language services. No procedural violation occurred based on failure to provide prior written notice. (Factual Findings 38, 44; Legal Conclusions 1-5, 30, 31.)

ISSUE 1G – APPROPRIATE GOALS

33. Student contends that she was denied a FAPE because the goals in all of the operative IEPs between December 3, 2005 and December of 2007 were inappropriate. In particular, Student contends that: occupational therapy goals should have been written regarding self-help skills and tactile defensiveness, i.e., Student's resistance to touching Braille; that assistive technology goals should have been written regarding the use of a Braille writer and other assistive technology that was provided to Student; and that all of the goals were inappropriate because they were not sufficiently designed to increase Student's independence.

34. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be

involved in and progress in the general curriculum” and “meeting each of the child’s other educational needs that result from the child’s disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child’s goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

35. Here, Student’s SDC teachers and service providers all persuasively testified that Student’s goals were appropriate. Review of the goals from each operative IEP demonstrates that the goals were based on present levels of performance, were measurable and aligned with Student’s unique needs in a functional skills curriculum. Student’s assertion that a separate tactile defensiveness goal should have been written was not supported by testimony from an occupational therapist, and more importantly, Student’s needs in this area were met because Student’s aide and the vision specialists worked with Student on touching Braille surfaces. Moreover, no separate occupational therapy goals were required for self-help skills because in all operative IEPs the occupational therapist was listed as being responsible, in part, for the implementation of the goals. As to a Braille writer goal, this was not appropriate because given Student’s cognitive level, it was a challenge for her just to learn to identify some functional Braille. It cannot be said that Student should have been taught to type Braille symbols without Student first mastering some Braille symbols that she understood. As to assistive technology, no specific goals were needed because Mother had chosen not to have Student use assistive technology for speech and the assistive technology provided to Student was provided as a classroom support, such as books on tape. In light of the above, this claim is meritless. (Factual Findings 1-3, 5, 6, 8, 10, 11, 16-18, 20, 21, 23, 26-28, 32-34, 36-38, 41-43; Legal Conclusions 1-5, 33, 34.)

ISSUES 1H, 1I, 1J – APPROPRIATE RELATED SERVICES, ASSISTIVE TECHNOLOGY AND PLACEMENT

36. Student contends that she was provided an inappropriate level of occupational therapy services because the level of services was based solely on information about Student obtained from a teacher and Student's aide. Similarly, Student contends that her levels of speech therapy were inadequate because the levels of service were based solely on observation of Student rather than formal assessments and should have been higher because Student experienced a regression in use of speech. As to vision services, Student contends that Student was not offered appropriate Braille instruction and that the level of services were set without sufficient assessments. As to assistive technology, Student contends that she should have been formally assessed for assistive technology and that Student should have been taught to use a Braille writer and that Student should have been trained and provided with a device to produce speech for her. Student further contends that her placements were all inappropriate because she did not make progress and was offered the same placement year after year.

37. A child receives FAPE when he receives access to an education that is sufficient to confer "some educational benefit" upon the child. (*Rowley, supra*, 458 U.S. 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 in light of what was reasonable at the time. (See *Adams v. State of Oregon, supra*, 195 F.3d at p. 1149; *Gregory K. v. Longview School District, supra*, 811 F.2d at p. 1314.) To provide FAPE, 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. (*Gregory K. v. Longview School District, supra*, 811 F.2d at p. 1314.) A FAPE includes 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).)

38. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.) If it is determined that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication, instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

39. To the extent that Student's contentions regarding the appropriateness of services rely on an allegation of failure to properly assess Student in all areas of suspected disability, Student failed to meet her burden of proving this claim. (See Issue 1a, above.)

40. Student failed to meet her burden of demonstrating that her occupational therapy services were inappropriate to meet her needs. The persuasive testimony of OT Minnis, that Student's levels of occupational therapy were appropriate, was not contradicted at hearing. Similarly, as to speech therapy, the persuasive testimony of speech therapist Brown that Student's levels of speech therapy were appropriate was not contradicted at hearing. To the extent Student contends that the speech therapy levels in the October 12, 2007 IEP were inadequate because Student had experienced a regression

in use of speech, Student's contention also fails. The October 12, 2007 IEP team had this information, i.e., that classroom personnel had observed Student using less speech and more echolalia following a summer of 2007 seizure. However, as explained by speech therapist Brown, work on Student's speech goals was not stopped, but instead was imbedded into the functional skills curriculum in natural environments and implemented by Student's teacher and aide. There was no evidence contradicting Brown that this level of service was appropriate.

41. As to vision services, Student's contention fails. The evidence showed that Student was provided with appropriate vision services. Student's program within the District included efforts to teach her functional, whole word Braille rather than the Braille alphabet. District witnesses convincingly explained that attempting to teach the Braille alphabet would have been inappropriate for Student because it would require Student to master not just the correspondence between Braille symbols and letters, but the abstract idea of the letters standing for phonetic sounds within words. Both of the District's vision specialists who testified had formed the opinion that Student could not learn Braille by learning Braille letters and convincingly explained that Braille, if at all, was only appropriate to be taught for functional use such as distinguishing between a male or female bathroom. The use of whole word Braille with Student was appropriate given Student's cognitive limitations and is analogous to children learning to sight-read words prior to being exposed to phonics. Contrary to Student's contentions, the evidence showed that District staff worked patiently with Student on Braille symbols. Student was taught by qualified special education teachers, caring, experienced classroom aides and qualified vision specialists. Accordingly, Student failed to meet her burden of showing that the vision services were not designed to meet her unique needs.

42. Student's contentions regarding assistive technology also fail. Mother unequivocally testified at hearing that a conscious choice was made to not have Student

rely on a device to talk for her because Student had some speech ability that should be encouraged. Mother's testimony on this point was consistent with the uncontroverted opinion of speech therapist Brown. As to the Braille writer, the evidence did not establish that this was provided to the classroom for Student to learn how to type Braille; but instead was used to allow the vision specialists to provide Braille labeling for items in the classroom that would be used with Student. To the extent Student was exposed to the feeling of the Braille writer, this was appropriate, given Student's seeming resistance to running her fingers over Braille. Finally, Student was provided with numerous assistive technology devices such as specialized switches and touch screen computer software.

43. Finally, Student's contention that her placements were inappropriate is also not supported by the record. Student made progress in her placements at all times. Moreover, Student's SDC placement was appropriate. There was no evidence that given Student's disabilities that she should have been placed in a general education classroom. Instead, Student was appropriately placed with peers of similar levels of disability. Student's functional skills curriculum was implemented in real world settings such as job sites or community outings. However, Student was exposed to typical peer tutor and was mainstreamed into enriching general education electives like dance, demonstrating that Student was provided a placement in the least restrictive environment. Student's SDC teachers were experienced and competent educators and Student was provided with dedicated and experienced aide support by Hunnewell up to the time when she was scheduled to exit special education.

44. For the reasons set forth above, Student failed to demonstrate that she was denied a FAPE because her related services and placement were inappropriate. (Factual Findings 1-3, 5, 6, 8, 9-12, 15-28, 30-34, 36-39, 41-44, 48-50; Legal Conclusions 1-5, 36-39.)

ISSUE 1K – TRANSITION SERVICES

45. Student contends that she was denied a FAPE because the transition plans in all of her operative IEPs from December 3, 2005 through December of 2007 were deficient. Specifically, Student contend that the transition plans should have identified specific outcomes in the area of independent living and should have also indicated that Student intended to pursue “training” and “education” after exiting high school. As discussed below, this claim fails.

46. “Transition services” means “a coordinated set of activities for an individual with exceptional needs” that: 1) “Is designed within an results-oriented process, that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to postschool activities, including post-secondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation”; 2) “Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil”; and 3) “Includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.” (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) Transition services may consist of specially designed instruction or a designated instruction and service. (34 C.F.R. § 300.43(b); Ed. Code, § 56345.1, subd. (b).)

47. Prior to October 10, 2007, the Education Code defined “transition services” as “a coordinated set of activities for an individual with exceptional needs” that 1) “Is designed with an outcome-oriented proves, that promotes movement form school to post-school activities, including post-secondary education, vocational training, integrated employment, including supported employment, continuing and adult education, adult

services, independent living, or community participation”; 2) “Is based upon the individual pupil’s needs, taking into account the pupil’s preferences and interests”; and 3) “Includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.” (former Ed. Code, § 56345.1, subd. (a).) This definition is consistent with that contained in title 20 United States Code section 1401(3) prior to July 1, 2005.

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

49. Here, the evidence established that Student’s parents, who had full legal decisionmaking power for Student, participated in the development of all of Student’s IEPs. The evidence did not support a finding that Student was capable of articulating her own post-graduation plans. In October of 2004, the transition planning section of the IEP expressly reflected that parents needed to work with TCRC to determine what Student would be doing after high school in order “to help direct instruction in her last years of school toward her strongest areas of need in the areas of semi-independent living,

community access and work.” The October of 2004 also expressly informed parents that once they chose a post-secondary option for Student, the District was willing to adjust Student’s IEP accordingly. In other words, Mother and Father were on notice that, consistent with the transition planning requirements, it was up to them to express a preference on behalf of Student. Mother and Father attended and participated in all subsequent IEPs during the statute of limitations period after December 3, 2005. At the time of the hearing, Mother and Father were still mulling over whether to place Student at two of the programs that had been discussed at the October of 2004 IEP team meeting. There is no requirement under the IDEA that a school district independently select the most appropriate post-secondary outcome for a particular student or provide a transition plan that takes into account all possible post-secondary outcomes. Student produced no evidence at hearing regarding what “training” programs or “education” programs would have been appropriate aspirations for Student at the time the IEPs were drafted or any evidence that parents were prevented from providing input into the transition plan. Instead, the evidence at hearing demonstrated that the information known to the IEP teams at the time was that neither job training, nor post-secondary education were realistic or even preferred post-secondary outcomes and that Student’s functional skills program, which included skill-building at job sites and a functional skills curriculum, was appropriate. Accordingly, in light of what was known to the IEP teams at the time, Student’s transition plans were appropriate. No procedural violation regarding transition planning occurred. (Factual Findings 1-4, 6-8, 10, 11, 13-15, 26-28, 30, 32, 35, 41, 43, 44-49; Legal Conclusions 1-5, 45-46.)

ISSUE 2 – STAY PUT

50. Student contends that the District failed to meet its “stay put” obligations because a specific one-to-one classroom aide was not assigned to replace aide Hunnewell, who, effective December 20, 2007, took another aide position with the District.

51. Under federal and State special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of a due process hearing unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code § 56505, subd. (d).) This is commonly referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP) which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Ed.* (6th Cir. 1990) 918 F.2d 618, 625.)

52. Here, nothing in the last agreed-upon and implemented IEP dated October 12, 2007, specified that a particular one-to-one aide would be provided to Student or that only one aide could be assigned to work with Student. Prior to October 12, 2007, Student had been successfully served by other aides when Hunnewell was unavailable. As in prior IEPs, the October 12, 2007 IEP noted that Student needed "adult supervision and assistance the entire school day." Consistent with the express terms of the IEP, Student was provided with such one-to-one assistance during the time she attended a District program under "stay put." Accordingly, no violation of "stay put" occurred. (Factual Findings 19, 39, 55; Legal Conclusions 50, 51.)

ISSUES 3 AND 4 – FAPE UNDER THE OCTOBER 12, 2007 IEP

53. The District contends that the October 12, 2007 IEP offered Student a FAPE and that the District subsequently provided Student a FAPE by implementing the terms of the IEP. As discussed below, the District is correct.

54. To demonstrate that an IEP provided a particular student with a FAPE, a district must show that it complied with the procedural requirements for an IEP and that based on what was reasonable at the time, the student received access to an education that met the child's unique needs, comported with the student's IEP, and was reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207; *Adams v. State of*

Oregon, supra, 195 F.3d at p. 1149; *Gregory K. v. Longview School District, supra*, 811 F.2d at p. 1314.)

55. Here, the October 12, 2007 IEP was procedurally proper. All required parties were present and Student and her parents attended and participated in the IEP process. The IEP contained appropriate goals in all areas of need including transition services. Student was placed in an SDC. Despite being in an SDC, Student had interaction with typical peer tutors, participated in general education electives and received instruction in the community and job sites as part of her functional skills curriculum. Thus, Student's placement was appropriate and was the least restrictive environment for her. The testimony of District personnel that Student received appropriate levels of related services was not contradicted by other educators or service providers. Student received all of the services and instruction called for by the IEP including the provision of a one-to-one aide, demonstrating that the IEP was implemented by the District.

56. In light of the above, the District provided Student with a FAPE under the October 12, 2007 IEP. (Factual Findings 1-6, 9-26, 30-45, 48-50; Legal Conclusions 1-5, 53, 54.)

ISSUE 5 – EXIT FROM SPECIAL EDUCATION

57. The District contends that it properly exited Student from special education as of December 20, 2007, just after Student's 22nd birthday. As discussed below, the District is correct.

58. In California, a person who turns 22 years old in the months of October, November or December "shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year." (Ed. Code, § 56026, subd. (c)(4)(C).) Local agencies are prohibited from extending the eligibility dates and "in no event may a pupil be required or allowed to attend school . . . beyond those eligibility

dates solely on the basis that the individual has not met his or her goals or objectives.” (Ed. Code, § 56026, subd. (d).)

59. Here, Student was born on October 26, 1985, making her 22 years old in December of 2007. The District’s fiscal year ran from July 1, 2007 through June 30, 2008. School was not in session between December 20, 2007 and December 31, 2007. The October 12, 2007 IEP expressly stated that Student’s exit date was December 20, 2007. Whether or not Student achieved her goals in the IEP could not extend her special education eligibility beyond the maximum age of 22. No parental permission or input was needed to exit Student from special education when she aged out of the program. Thus, the District providing Student with an exit summary on December 6, 2007, has no impact on the determination of Student’s final day of special education eligibility. Under these circumstances, Education Code section 56026, subdivision (c)(4)(C) mandated that Student was no longer entitled to enrollment in special education after December 31, 2007, and was properly exited from special education on December 20, 2007, the last day of school in 2007. (Factual Findings 1, 40, 51, 53, 54; Legal Conclusions 57, 58.)

ORDER

1. All of Student’s requests for relief are denied.
2. The District provided Student with a FAPE under the terms of the October 12, 2007 IEP.
3. The District properly exited Student from special education effective December 20, 2007.

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, the District prevailed on all 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: July 18, 2008

A handwritten signature in black ink, appearing to read 'R. T. Breen', is positioned above a horizontal line.

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings