

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. N2008090353

DECISION

Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter on February 3 through 6, 10, and 11, 2009, in Montebello, California.

Student and his mother and father (Mother and, collectively, Parents) were represented during the hearing by Shawna Parks and Anna Rivera, Attorneys at Law, Disability Rights Legal Center. In addition, attorney Lewis Bossing, the Learning Rights Law Center, and The Legal Aid Society Employment Law Center were co-counsel of record. Mr. Bossing was present on February 5, 2009.¹ Jessica Toth, an attorney with the Learning Rights Law Center, was present on February 6, 2009. No one from The Legal Aid Society Employment Law Center appeared. Mother was present throughout and Father did not attend the hearing. Spanish/English interpreter Ana Juliao provided

¹ Mr. Bossing was identified on the record as with the Bazelon Center for Mental Health Law in Washington D.C.; however, he appeared in this case on his own and not as a representative of that firm.

translation services to Mother during the hearing. Student was present on February 3, 2009.

Karen Gilyard, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the Montebello Unified School District (District). Co-counsel Carlos Gonzales of the same firm was present during some of the hearing. Donna Wakano, a teacher on special assignment, was present on behalf of the District throughout the hearing.

On September 11, 2008, Student filed a request for a due process hearing (complaint) with OAH.² On October 10, 2008, OAH granted a continuance of the hearing. At hearing, oral and documentary evidence were received. At the request of the parties, the record remained open until March 4, 2009, for the submission of written closing arguments. On that date both parties timely filed closing arguments, the record was closed, and the matter was submitted.

ISSUES³

1. Beginning on September 11, 2006, did the District fail to timely and appropriately assess Student's unique needs regarding postsecondary transition for the 2006-2007 and 2007-2008 school years?

² Although Student initially filed documents on September 3, 2008, OAH determined in an order issued on October 2, 2008, that the complaint was filed on September 11, 2008, when OAH received Student's identifying information required by law.

³ The ALJ has reframed and reorganized the issues for purposes of clarity and organization. The specific contentions of the parties are set forth with respect to each issue in the decision.

2. Beginning on September 11, 2006, did the District have inadequate transition planning and related services for Student for the 2006-2007 and 2007-2008 school years, and thereby deny him a free appropriate public education (FAPE) by failing to:

- (A) Offer in the individualized education programs (IEPs) or provide appropriate, measurable postsecondary transition goals that were based on age-appropriate transition assessments related to training, education, employment and independent living skills, and met his unique transition needs;
- (B) Offer in the IEP or provide appropriate transition services based on Student's unique needs, taking into account his strengths, preferences, and interests, including vocational education, remedial math and reading, increased speech and language therapy, and vocational counseling and guidance;
- (C) Identify in the IEP transition plans adequate school staff responsible for the provision of the transition services; and
- (D) Identify in the IEP transition plans the frequency, location, and duration of all transition services?

REQUESTED REMEDIES

As a result of the above claimed violations of law and denials of FAPE, Student requests an order for the District to provide compensatory education to him in the form of 440 hours of compensatory one-to-one vocational job coaching, 880 hours of compensatory academic remediation in the areas of reading and math, and 88 hours of compensatory individual and small group speech and language therapy services until he exits his educational program at the age of 22, or longer if necessary.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student was born in September 1990. He is 18 years old and has lived with Parents within the geographical boundaries of the District for many years. He has attended schools within the District since 1994, including the school years at issue in this case.

2. Student has multiple disabilities. He has received special education and related services under the category of a severe speech and language impairment since the age of three, and under the additional category of a specific learning disability (SLD) for many years. His overall cognitive functioning has been found to be within the borderline range of intelligence to the mild mental retardation range, and he has visual and auditory processing, and visual motor integration deficits.⁴ Student also has a diagnosis of attention deficit hyperactivity disorder (ADHD), and a history of problematic and aggressive behaviors. He speaks both English and Spanish, and uses English as his primary language at school. His significant speech deficits encompass language comprehension, verbal expression, and articulation. Student's articulation deficits often render it difficult to understand his speech. He performs significantly below average in academics and social development.

3. In tenth grade, Student transferred to Montebello High School (MHS) for the 2005-2006 school year. Student entered 11th grade at MHS in the fall of 2006, turned 16 years old in September 2006, and completed 12th grade in June 2008. He has not graduated from high school. He still receives special education and related services

⁴ Standardized cognitive or intelligence quotient (IQ) scoring places scores from 80 to 89 in the low average range, from 70 to 79 in the borderline intelligence range, and from 50 to 69 in the mild mental retardation range.

from the District and is expected to do so until he reaches the age of 22.⁵ This case focuses on the postsecondary transition plans, goals and services that the District offered and provided to Student during his 11th and 12th grade school years at MHS.

ASSESSMENTS OF POSTSECONDARY TRANSITION NEEDS

4. Student contends that the District failed to timely and appropriately assess his unique needs regarding postsecondary transition planning and services in order to develop postsecondary transition goals and services for both the 2006-2007 and the 2007-2008 school years. The District contends that it complied with the law and conducted multiple assessments regarding Student's academic and functional levels of performance that were related to his postsecondary transition planning needs.

5. A special education pupil must be reassessed, following an initial assessment and determination of eligibility, not more frequently than once a year. The pupil shall be reassessed at least once every three years (triennial assessment), unless the parent and the local educational agency (LEA) agree otherwise. No single procedure may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program. An IEP meeting to review the assessment must occur within 60 days of the receipt of parental consent for the assessment.

6. Beginning not later than the IEP in effect when a pupil becomes 16 years of age (or younger if appropriate), his or her IEP must have postsecondary goals that are based on age-appropriate transition assessments related to training, education,

⁵ The right to special education is extended to those pupils between the ages of 19 through 21 years old with preexisting IEPs who have not yet completed their prescribed courses of study, have not met proficiency standards, or have not graduated from high school with a regular high school diploma.

employment, and where appropriate, independent living skills, and transition services needed to assist the pupil in reaching the postsecondary goals. Thereafter, the postsecondary goals and transition services shall be updated annually.

7. Transition services for high school students are an essential component of a FAPE. The objective of transition services is to facilitate the movement of high school pupils with disabilities from school to post-school activities, including “postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.” The transition laws thus place an affirmative burden on the school districts to conduct transition assessments in order to develop appropriate postsecondary goals.

8. To determine whether an LEA offered a FAPE, the IEP must meet both the procedural and substantive requirements of the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004). Not every procedural violation is sufficient to support a finding that a student was denied a FAPE. To constitute a denial of FAPE, the procedural inadequacy must have (a) impeded the child’s right to a FAPE, (b) significantly impeded the parent’s opportunity to participate in the decision making process regarding the provision of FAPE, or (c) caused a deprivation of educational benefits.

Transition Assessments by the Beginning of the 2006-2007 School Year

9. For the 2006-2007 school year, Student contends that by the time he became 16 years old in September 2006, the only transition assessment the District conducted was a job interest survey, and that the transition areas related to training, education, employment, and independent living skills were not assessed. The District contends that it had conducted multiple assessments that complied with the requirements for transition assessments by the time Student turned 16.

10. In the spring of 2006, when Student was in 10th grade at MHS, the District held IEP meetings on April 5, May 22, and June 5, 2006, which collectively comprised Student's triennial IEP.⁶ The appropriateness of the IEP offers made at those meetings, and the assessments the offers were based on, are beyond the applicable two-year statute of limitations and are therefore not at issue in this proceeding.⁷ Nevertheless, the assessments and IEPs are relevant to determine the information known to the parties as of September 11, 2006, what transition-related assessments had been conducted by then, and what IEP transition services were then in effect based on those assessments.

11. The 2006 IEP meetings were convened to review Student's triennial assessments conducted by the District, and to offer him an individualized transition plan (ITP) as part of his IEP. He was then 15 and a half years old. The ITP was a District form used to offer postsecondary goals and transition services as an integrated part of the annual IEP documents. Thus, the District complied with the law to offer postsecondary goals and transition services in Student's IEP by the time he became 16 years old. The assessments the District had conducted and relied on included psychoeducational, academic, speech and language, and behavior assessments.

⁶ For all IEP meetings attended by Mother that are described in this decision, she was accompanied by an attorney or advocate and assisted by an interpreter. In addition, she consistently requested written Spanish translations of the IEP documents which the District promptly provided.

⁷ By order dated October 31, 2008, OAH determined that Student's asserted issues for the 2005-2006 school year were beyond the applicable two-year statute of limitations, which was not equitably tolled while Student pursued other legal forums. Accordingly, references to the "2006-2007 school year" at issue herein begin on September 11, 2006, two years prior to the date the complaint was filed.

12. The spring 2006 IEP teams reviewed and relied on a triennial psychoeducational assessment of Student conducted by school psychologist Araceli Sosa in July 2005. The report detailed the results of multiple assessments regarding Student's then-present levels of cognitive, academic, and functional performance that were related to his post-high school transition needs, including cognitive functioning, psychological processing, social, emotional, and adaptive behavior. Ms. Sosa testified persuasively that cognitively, Student functioned at an intuitive thought level in the four to seven year old age range and struggled with the curriculum. Ms. Sosa found that Student was "prevocational" with a standard score of 10 on the prevocation/vocation subtest of the Adaptive Behavior Scale – School:2nd Edition (ABS-S:2), and a prevocational age equivalency of 10 years and nine months old.⁸ She also determined that he demonstrated challenging behaviors including impulsivity, nonconformity, not attending to tasks, and gang-related behaviors.⁹ Ms. Sosa recommended that Student needed a behavior support plan and a one-to-one Temporary Classroom Support (TCS) behavioral aide. Ms. Sosa was a qualified school psychologist with a Bachelor's Degree in psychology obtained in 2000, and a Master's Degree in school psychology obtained in 2004. She has been a school psychologist with the District since 2004, with seven years of prior experience as a teacher and counselor.

13. The triennial academic achievement assessment was conducted by Student's special education teacher, Judy Johnson. She used the Woodcock-Johnson III

⁸ "Prevocational" refers to a pupil's skill levels prior to starting actual job, career, or vocational training or education.

⁹ Student's behaviors labeled "gang related" included wearing clothing associated with gangs in his community, making perseverative comments and questions to identify the gang status of peers, aggressive behavior, and profanity.

(WJIII), a standardized assessment tool, and established that as of April 2006, he was performing at a kindergarten to first grade level in reading, writing, and math, and was unable to complete work independently. He knew the letters of the alphabet and numbers up to 100. Student was able to read some simple one-syllable words and transcribe his name and other repetitive text. Ms. Johnson has been a special education teacher with the District since 2000, holds a mild moderate special education teaching credential, and received training in administering academic assessments and writing transition plans.

14. The April 2006 IEP team knew from the assessments and their discussion of Student's unique needs that he needed to develop basic prevocational skills. The team offered Student an ITP to begin developing postsecondary transition services and related goals. They reviewed a Choices Interest Inventory survey administered to Student at the high school's "Career Center" in March 2006, which his limited vocational interests.

15. The Career Center is a separate facility at MHS that coordinated preparation for post-school educational and vocational activities for both typically developing peers and pupils with special needs. The Career Center conducted employment interest surveys and provided other services such as job training, job applications and resume profiles. Through the Career Center, MHS participated in the Workability 1 (Workability) program and the Regional Occupational Program (ROP). Workability is a community work experience program funded by a grant from the State of California Department of Education (CDE) for disabled students from 16 to 22 years old. ROP is a regional job training program through the Los Angeles County Office of Education for students 16 years of age and older.

16. Rhonda Paquette, a Workability 1 and ROP specialist with the District, was a member of Student's 2006 triennial IEP team. Based on the review of Student's unique

transition needs, she recommended that he should enroll in the ROP Diversified Occupations Program class at MHS so that he could learn prevocational skills and be evaluated by the teacher. The Diversified Occupations Program at MHS was an ROP program that had in-class vocational education and training for students with disabilities on the campus for an initial six week period each semester. Participation in the Diversified Occupations Program class was a mandatory prerequisite for the community based Workability and ROP work experience programs. The class taught prevocational skills during two combined class periods, during which the teacher would evaluate each pupil's work readiness skills and make recommendations. Good attendance and acceptable work behavior and attitudes were basic requirements that enabled pupils to be approved for community work experiences. Following the in-class training, all pupils with sufficient work readiness skills were assigned to a community work site for actual work experience and on-the-job training to complete the class. Involvement in any of these activities required parental consent and parental applications through the Career Center.

17. The 2006 IEP team also reviewed and relied on Student's triennial speech and language, behavior, and assistive technology evaluations. These assessments were related to his postsecondary transition needs as they dealt with his ability to communicate orally and in writing and behave appropriately across environments. The District's speech and language specialist, Roxanne Bickel, reported that Student had missed 41 speech and language sessions during the 2005-2006 school year, due to both medical reasons and juvenile hall incarceration, which impeded his progress. Student's baseline level of performance was that he fell below the first percentile rank in both receptive and expressive language, was easily distracted from tasks, required frequent reminders to refocus his attention, needed continual encouragement to perform, often

answered "I don't know" without considering the question, exhibited multiple articulation errors, and needed prompts to slow his speech down to be understood.

18. The 2006 IEP team reviewed and relied on the District's March 2006 behavior assessment. It established that, in the fall of 2005 and the spring of 2006, Student's negative behaviors had escalated, particularly when he did not take prescribed medications. They included aggressive behavior towards peers and adults, using profanity, not following adult directions, refusing to go to school, and off task behaviors requiring constant redirection. These behaviors were related to Student's transition needs as they impeded his ability to progress and to develop appropriate prevocational skills and attitudes. The East Los Angeles Regional Center (Regional Center) reported to the June 2006 IEP team that they were providing behavioral intervention services in the home pursuant to a juvenile court order. Based on Mother's request, the June 2006 IEP team agreed to conduct a functional analysis assessment (FAA) of Student's behavior. The team also agreed to refer Student to the Los Angeles County Department of Mental Health (DMH) for an AB3632 mental health assessment.¹⁰

19. At the June 2006 IEP meeting, the Assistive Technology Exchange Center (ATEC), a nonpublic agency (NPA), recommended doing an assessment based on concerns about Student's fine motor skills and the team agreed. In July, ATEC evaluated Student's computer and written communication skills and needs, both related to his postsecondary transition needs, including the ability to communicate to an employer

¹⁰ Chapter 26.5 of the Government Code, which includes Government Code section 7576, governs interagency responsibilities for mental health services. These legal provisions are commonly referred to as "AB 3632" or "AB 2726," in reference to the bills in the California Assembly which enacted these provisions into law in 1984 and 1996, respectively.

and be understood, and the ability to perform basic computer functions. ATEC issued a report dated July 17, 2006. ATEC found that Student could write but not always legibly, struggled with spelling, and could not generate a comprehensible printed sentence. He was a beginning computer user who was able to use a standard computer keyboard and mouse at school for a reading program, and for free time activities such as supervised web browsing. He did not know how to touch type and required verbal prompting for most computer activities. ATEC therefore evaluated a number of assistive technology devices and software. In July 2006, ATEC recommended that Student would benefit from "text to speech" technology.¹¹

Transition Assessments by the Age of 16

20. The evidence does not support Student's contention that when he turned 16 years old, the District had not conducted age-appropriate transition assessments related to training, education, employment, and independent living skills as required by law. As set forth above, the District assessed Student's psychoeducational, academic, speech and language, behavioral, assistive technology, and functional performance levels. These areas of assessment related to his postsecondary transition needs regarding further basic education, employability, oral and written communication, and appropriate behavior. The IEP team developed an ITP based on those assessments by the time Student turned 16 years old. The assessments showed that Student was prevocational, with no job experience and little job awareness; could not functionally read, write, or do basic math; had severe expressive, receptive, and articulation problems; was not capable of focusing on a task for more than five to 10 minutes; was a beginner at the computer and could not type; and had problematic behaviors with both

¹¹ The District later obtained assistive technology software for Student but the evidence did not establish which program was selected.

peers and adults. Due to Student's limited cognitive and academic functioning, Student's independent and self-help living skills were an appropriate transition concern. His self-help skills were incidentally assessed in the District's assessments and known to the IEP team, including his lack of initiation, need for constant prompts, repetitions and reminders, reliance on a one-to-one aide throughout the day, and his ability to take a bus and make a phone call. Thus, these assessments were all related to Student's postsecondary education, employment, and independent living needs as required by law.

21. Dr. John Johnson, Student's transition expert, has been an Associate Professor in the Department of Special Education of San Diego State University for nine years, teaches courses in transition, and has authored numerous publications in the area of transition. He obtained a Master's Degree in Special Education in 1983, and a Ph.D in Education in 1993. As set forth in Factual Finding 57, Dr. Johnson analyzed the District's ITPs for both school years, and issued a written report. In Dr. Johnson's report, he did not consider that any of the District's 2005 and 2006 assessments qualified as "transition assessments" except for two: the vocational subtest of the ABS-S:2 and the Choices Interest Inventory. He was also critical that the District had not adequately assessed Student's prevocational skills and needs. Dr. Johnson claimed that there are a myriad of additional, valid postsecondary transition assessments that the District should have used to assess Student. Dr. Johnson gave several examples, including the Picture Inventory Career Survey (PICS), and a functional observational assessment.

CHOICES INTEREST INVENTORY AND ABS-S SURVEY

22. Dr. Johnson testified that the Choices Interest Inventory was not an appropriate vocational assessment. The Choices Interest Inventory is a computerized employment interest assessment that asks questions and results in two profiles, one showing areas of interest, and another reflecting occupational titles related to the

interests. Student scored highest in the broad vocational interest areas of "social" and "enterprising." The computerized career profile for those areas of interest produced 103 career choices. Because Student could not read, the questions were read to him and he pressed a button or key for either "yes" or "no" to indicate his responses. Dr. Johnson conceded that the Choices Interest Inventory was a valid transition assessment of a pupil's employment preferences and interests, and that it was chronologically an age-appropriate tool. However, he was critical that the inventory was not developmentally appropriate for Student because it was designed for a reading level of typically developing ninth graders, and he was developmentally much younger. Dr. Johnson questioned how much Student may have comprehended based on his limited cognitive functioning and experience.

23. The law's requirement for "age-appropriate" transition assessments does not specify whether it refers to developmental or chronological age. The Choices Interest Inventory does not assess a pupil's skills in any vocational area. It is a tool to discern what a pupil's possible areas of preference and interest may be. Student was over 15 years old when the assessment was conducted. No test protocols were introduced into evidence, and there was no evidence that the test manufacturer required Student to read the questions himself in order to be properly assessed, or whether developmental age was a factor to be considered. Student was able to independently push a button or key for "yes" or "no" in response to each question. Thus, Student did not establish that being provided with adult help to have the questions read and explained to him invalidated this assessment. The results indicated that Student thought he was interested in working in retail or at an airport. The District was required to take Student's preferences and interests into account in developing transition services. Based on the foregoing, the evidence established that the Choices Interest

Inventory was a valid interest assessment and that the limited results reflected Student's limited cognition and exposure to vocational options.

24. At hearing, Dr. Johnson conceded that the District's 2005 triennial psychoeducational assessment was an appropriate transition assessment to the extent that it addressed Student's cognitive and functional performance levels. Dr. Johnson was persuasive, however, that the vocational subtest of the ABS-S:2, administered as part of the psychoeducational assessment, was not an appropriate transition assessment. While the ABS-S is not generally considered a transition assessment, it is a standardized assessment of adaptive behavior that Dr. Johnson conceded could be used to develop postsecondary transition goals. However, he established that the second edition of the ABS-S, used by the District, "is known to have flaws in its structural validity rendering the results in areas other than personal independence and social behavior suspect (see Watkins, Ravert & Crosby, 2002)," and should not have been used. Nevertheless, its use was harmless, because Dr. Johnson concurred with the District's overall finding, established clearly in the evidence, that Student was prevocational with minimal prevocational skills when he turned 16 years old, and the District did not use the results for anything else.

25. Dr. Johnson's testimony that the District should have used the PICS assessment in 2006 to assess Student's transition needs by the time he turned 16 years old was not persuasive. He agreed that the PICS is a valid job interest survey but expressed concerns about Student's ability to comprehend it. The District later administered the PICS to Student in March 2008. (Factual Finding 50.) The District's failure in 2006 to conduct an additional occupational interest survey did not render its use of the Choices Interest Inventory invalid. Moreover, the fact that Student or Parents preferred other assessment tools does not render the District's employment interest

inventory inappropriate. Dr. Johnson's rejection of the District's assessments, except as noted above, was not persuasive.

ASSESSMENT OF PREVOCATIONAL TRAINING SKILLS

26. The remaining question is whether the District's assessments by the time Student turned 16 years old addressed his transition needs related to the area of prevocational training skills. This included such skills as the ability to understand and follow instructions; to complete tasks; to follow rules, including being on time; to focus and pay attention to detail; and to understand safety for himself and others. Aside from the general determination that Student was prevocational, the District's assessments for Student did not assess his prevocational training skill levels or needs. The other assessments looked at Student's unique needs regarding things like staying on task or following directions, but only in a classroom environment. Dr. Johnson was persuasive that Student's prevocational skills and needs should have been assessed by a functional vocational assessment, which would have observed and analyzed his prevocational needs while he was working on tasks or jobs.

27. Therefore, Student's skill strengths and deficits in the areas of prevocational training were incompletely evaluated by the District's assessments. Based on the foregoing, as of the time after September 11, 2006, when Student became 16 years old, the District had failed to assess his prevocational training skills and needs as required by law. Thus, the transition plan, goals and services in effect in Student's IEP when he turned 16 were not based on an assessment that addressed his prevocational training needs.

28. An appropriate remedy for the District's failure to assess Student's prevocational skills by the time he turned 16 years old in September 2006, would be to order the District to conduct a functional vocational assessment. However, as set forth in Factual Findings 33 through 44, the District offered to conduct a functional vocational

assessment of Student in August 2006, prior to the start of the 2006-2007 school year, completed the vocational assessment and held an IEP meeting in March 2007. In addition, the District conducted another vocational assessment in March 2008. (Factual Findings 50.)

29. Student obtained an independent vocational assessment in June 2008 from Jean Brincko, a registered professional career counselor. Ms. Brincko testified persuasively that, due to Student's limited reading ability and lack of knowledge about work environments, she was unable to assess him using standard career assessments. The evidence does not demonstrate that Student needs another functional vocational assessment at this time. Moreover, Student did not request reimbursement for Ms. Brincko's vocational assessment.¹² Therefore, no further remedy for this violation was requested or is warranted.

CDE Compliance Orders Regarding Transition

30. For the 2005-2006 school year in 10th grade, Student and other pupils filed compliance complaints against the District with CDE regarding its provision of postsecondary transition assessments and services. By March 2006, CDE had conducted investigations and determined that the District was out of compliance with special education laws and/or regulations pertaining to postsecondary transition assessments and services. CDE issued corrective action orders to the District in March and August 2006, requiring the District to offer compensatory education related to postsecondary

¹² Student did not request another vocational assessment but did request other appropriate relief. In addition, because Student did not request reimbursement for Ms. Brincko's assessment, he did not submit evidence establishing Parents' expenses in obtaining the assessment, which would be necessary in order for this Decision to award such reimbursement.

transition to certain pupils including Student; to provide District staff training sessions on IEP transition services; and to complete “student interest inventories and functional vocational assessments” for certain pupils, including Student.

31. The specific violations CDE found for the 2005-2006 school year are not in the record and, in any event, would not be dispositive of the issues in the present case, which involve different school years and issues. CDE conducts limited investigations, has 60 days to investigate and issue a report regarding technical compliance, and does not have jurisdiction to determine whether any violation may result in a denial of a FAPE.¹³ Therefore, the fact that in 2006, CDE ordered the District to conduct a functional vocational assessment of Student was considered in evaluating the timing of the District’s assessment offers in 2006, but otherwise accorded little weight.

Transition Assessments During the 2006-2007 School Year

32. Student contends that the District did not timely or appropriately assess his transition needs in all areas required by law during the 2006-2007 school year after he turned 16 years old. The District contends that it offered and timely conducted behavioral and functional vocational assessments and met its legal assessment obligations. An IEP meeting to review the assessment must occur within 60 days of the receipt of parental consent for the assessment.

33. In August 2006, pursuant to the CDE corrective action orders, the District wrote a letter to Mother and offered to conduct a functional vocational evaluation of Student by an independent assessor. Mother did not reply. At the next IEP meeting on October 27, 2006, Student’s ITP was reviewed. The District again offered to conduct further transition assessments. Specifically, the District offered to conduct a Brigance Diagnostic Employability Skills Inventory (Brigance DESI) and an independent functional

¹³ 34 C.F.R. § 300.152(a)(2006); Cal. Code Regs., tit. 5, § 4662, subd. (b).

vocational evaluation. In addition, Lisa Heffel, a Workability specialist, proposed a "situational assessment" where Student could perform some work on the campus of MHS and his prevocational skills and needs would be evaluated by observation of him on the job. Mother orally agreed to the Brigance DESI and the functional vocational assessment during the meeting but did not sign an assessment consent form.

BEHAVIORAL ASSESSMENTS

34. On November 27, 2006, the District timely scheduled an IEP meeting to review Student's FAA behavior assessment and the AB3632 mental health assessment completed by the Los Angeles County DMH.¹⁴ Because Mother did not attend that meeting, the IEP team reconvened on January 16, 2007 to review the behavior assessments; however, Mother's absence at the November meeting did not render the IEP assessment review untimely. DMH's mental health assessment report dated September 20, 2006, found that when Student did not take his medications as prescribed, his behavior became unmanageable, and concluded that Student met the eligibility for AB3632 mental health treatment. They offered medications to be prescribed by a psychiatrist, and medication management in order to benefit from his special education program.

35. Ms. Sosa's FAA report dated November 22, 2006, established Student did not meet the criteria requiring an FAA to be conducted.¹⁵ She found that the behavior

¹⁴ The 60-day time requirement within which to conduct an assessment and hold an IEP meeting to review it was extended by law for the summer vacation.

¹⁵ An FAA is required by California law whenever a pupil has a "serious behavior problem," defined as behaviors "which are self-injurious, assaultive, or cause serious property damage and other severe behavior problems that are pervasive and

support plan put into place in the spring of 2006 was assisting to decrease Student's disruptive behaviors somewhat. He was placed in the District's special day class for pupils with mild to moderate disabilities (MM/SDC), which concentrated on an academic and diploma-based curriculum in English, history, biology, and math. Ms. Sosa persuasively established that Student's negative attention-seeking behaviors, including disruptive profanity and gang-related statements, interfered with his progress and relationships with peers and adults. Because the classes were generally above his abilities, he frequently used negative behaviors to avoid the lessons, was in danger of failing, and needed a functional skills program instead.

36. The District members of the November 2006 and January 2007 IEP teams therefore recommended that Student should have a functional skills curriculum and vocational training classes to earn a certificate of completion rather than remain in academic classes focused on a high school diploma.¹⁶

37. Both of the above 2006 behavior assessments addressed Student's unique behavior needs that were related to his postsecondary goals and transition services regarding acceptable behavior, ability to establish work relationships, and employability. Acceptable behavior was a prerequisite in the ROP prevocational classes for being able to obtain community work experience. (Factual Finding 16.) Thus, the interventions did

maladaptive for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective." (Cal. Code Regs., tit. 5, § 3001, subd. (aa).) There was no evidence that Student's behavioral problems rose to the level that legally required the District to conduct an FAA.

¹⁶ Mother delayed agreeing to the change to a more functional curriculum until the June 2007 IEP, for unexplained reasons.

not result in a new behavior support plan but rather in a change of curriculum which supported his need for postsecondary functional skills.

BRIGANCE ASSESSMENT

38. By a letter received by the District just prior to the January 16, 2007 IEP meeting, Ms. Rivera sent the District a written response to the October 2006 IEP offer, in which Mother consented to the majority of the October 2006 IEP, including the Brigance, functional vocational, and situational assessments. Mother signed the assessment plan on January 16, 2007. At the same time she objected that the proposed assessments did not address Student's transition interests or needs. The District had 60 days thereafter within which to complete the assessments and hold an IEP meeting to discuss its results.

39. In early March 2007, prior to the March IEP meeting, the District attempted to assess Student using the Brigance DESI. The Brigance DESI was designed to assess grade equivalencies from first to eighth grade and required the pupil to read with comprehension. The District's assessor was not able to assess Student. Mother was unable to attend the March 2007 IEP meeting. The District went forward with the meeting and thereby complied with the law in timely convening an IEP meeting within 60 days from receipt of written consent. The District rescheduled the meeting for April 20, 2007, at which the Brigance DESI results were again discussed, and acknowledged as invalid.

TEACHER OBSERVATIONS AND FUNCTIONAL ASSESSMENTS

40. Pursuant to the implemented October 2006 IEP, Student obtained work through an arrangement with a Workability specialist, Sylvia Arch, in January 2007 in the MHS library for one period each school day. The March and April 2007 IEP teams reviewed information that Ms. Johnson, Student's case manager and special education

teacher, gathered regarding Student's prevocational skills and needs. These materials included information from his other teachers and the Career Center, including an assessment of his library job performance from Ms. Arch, and a vocational assessment by Dan Zavala.

41. Ms. Arch submitted two brief situational assessment reports to the IEP team, one dated March 14, and the second dated April 19, 2007, regarding Student's on-the-job skills working in the MHS library. Ms. Arch helped place Student in the MHC library job, monitored his performance, and observed him working there with his TCS aide. The March report included information from Student's TCS aide, Eddie Ugalde, who supported and supervised Student on the job. Ms. Arch credibly testified that, following training from the librarian, Student remembered what to do each workday and straightened chairs, cleaned bookshelves, computer tables and desks. He had a good attitude and was cooperative, but had a short attention span and needed to be redirected to stay on task. The April report included information from the librarian that Student did not need any prompting, which was contradicted by Mr. Ugalde's information that Student needed constant prompting. Ms. Arch established that Student continued to strengthen his work habits and had an excellent attitude.

42. Dan Zavala submitted a vocational assessment report to the March 2007 IEP team based on his observations of Student at MHS over two separate days in March. Mr. Zavala observed Student taking the attendance to the office, watering outside plants, cleaning, working in the library, sharpening pencils, and filing papers. Student was dependent on his TCS aide to initiate most tasks for him, prompt him, and remind him to stay on task, as he was easily distracted. During one assignment to file pupil papers in folders, Student had great difficulty reading the names and matching the names on the papers with the names on the folders. The job assignment was terminated because the task was too difficult for him. Mr. Zavala's report established that Student

was able to perform simple one and two-step tasks, most of which required the initiation and assistance of his TCS aide. Student tended to persevere on both taking the attendance to the office and outside watering (over-watering plants) because he enjoyed being outside of the classroom. Mr. Zavala analyzed Student's prevocational skills that needed to be addressed as follows: attention to detail, initiative, ability to self-correct, ability to stay on task, ability to get to work site/class on his own, promptness, comprehension of safety for himself and others, and ability to follow one-step verbal directions.

43. Dr. Johnson agreed that both the April 2007 library job reports and Mr. Zavala's report were situational assessments. However, he testified that Ms. Arch's assessments were inappropriate because they were limited to observing Student's prevocational skills in one environment, the library. Dr. Johnson opined that Student should have been placed in multiple job experiences so that his ability to generalize skills across environments could be evaluated. Dr. Johnson's testimony on this point was not persuasive. First, the District did offer Student other on-campus job experiences several times, including shadowing school maintenance staff, and working in the cafeteria. Mother and Student declined to accept them. In May 2006, the District offered Student the ROP Diversified Program, and as of the spring of 2007, Mother had not enrolled him. In addition, District staff were persuasive that pupils with severe disabilities needed extended time in one job placement in order to adjust and learn the basic skills necessary to be successful, and minimize transition stresses associated with changing jobs. Student had been observed on the library job over a period of about three months. Student and the District established that he liked to work and was successful in performing his tasks in the library. Student gained a sense of accomplishment and the librarian was satisfied with his work. The library job assessments, while appropriate, contained limited information. For example, other evidence suggested that Student was

not always on time to the job, but the reports were silent on both his attendance and punctuality, both necessary prevocational skills. There was no data on how often he needed to be prompted to do particular tasks or to transition to the next task. In comparison, Mr. Zavala's assessment detailed prevocational skills Student needed to work on.

44. Mr. Zavala's assessment qualified as a functional vocational assessment. The assessment focused on what Student could do and what he needed to learn to do in the natural, functional environment while performing tasks. It assessed Student's functional behavior involving both pre-independent living and prevocational skills in multiple natural settings, performing jobs or tasks on the school campus in multiple locations over periods of time on two separate dates. It detailed the basic prevocational skills that Student and the District needed to work on to support his transition to adulthood. Based on the date Mother consented to this functional vocational assessment, it was timely completed and the March 2007 IEP meeting was held within the 60-day timeline after parental consent as required by law. Thus, having completed the functional vocational assessment, the District had conducted assessments in all areas related to Student's transition needs as required by law.

45. However, as set forth in Factual Findings 26 through 44, the vocational assessment was untimely in that it was conducted approximately six months after Student turned 16 years of age. After the District offered to conduct a functional vocational assessment of Student in August 2006, Mother withheld consent to the assessment until mid-January 2007. Mother's withholding of consent for four months was unexplained and unreasonable. Consequently the District was responsible for only two months of the total six month delay in assessing Student's vocational needs after he turned 16 years old. The District's net two-month delay violated the legal requirements for assessments. The violation was immediately remedied because the District

completed the vocational assessment and timely held an IEP meeting. In addition, as determined in above, Student does not need a further vocational assessment at this time. Therefore, no further remedy based on failing to timely assess Student's vocational needs during the 2006-2007 school year is warranted at this time.

Assessments for the 2007-2008 School Year

46. Student contends that for the 2007-2008 school year, the District again failed to timely and appropriately assess his transition needs. The District contends that it was not required to reassess Student again until it agreed in November 2008 to conduct another vocational assessment. The District contends that the assessment was delayed due to Student's refusal to cooperate.

47. As part of an annual reassessment, the IEP team is required to review existing assessment data and identify what additional data, if any, is needed to determine continued eligibility, present levels of performance and educational needs, and whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the annual goals and participate in the general curriculum.

48. The District's offer of placement and services for the 2007-2008 year in 12th grade was made at the June 12, 2007 IEP meeting. The IEP changed Student's class schedule to a "blended program" to emphasize functional skills and goals by combining both MM/SDC and severely handicapped (SH) SDCs. The program included working in the library for first period in the Workability program, attending the ROP Diversified Occupations Program for two combined periods a day, and taking a functional math SH/SDC. Student attended the ROP Diversified Occupations Program in the fall of 2007, taught by Sylvia Negretti, to learn basic prevocational skills to qualify for community-based employment.

49. By the annual IEP in the spring of 2008, the District was required to reassess Student by reviewing the existing data, updating his transition goals and services, and deciding if any additional data was necessary to determine his needs, program and services. The evidence established that Student was terminated from the ROP program at an unknown point between November 2007 and March 4, 2008. At an IEP meeting on November 29, 2007, the team members generally discussed Student's progress and Mother requested an independent vocational assessment. The record is not clear if Student was still enrolled in the ROP Diversified Occupations class because the IEP meeting notes did not mention the status of the class, and no witness established when he was terminated from the class. At the meeting, the District agreed to provide another vocational assessment but did not agree to conduct an independent assessment. Mother signed a consent form at the meeting. The District was required by law to complete the assessment and hold an IEP meeting within 60 days thereafter. Thus, the District partially met its obligation to annually reassess Student's transition needs by reviewing existing data and determining that another vocational assessment was warranted before the annual IEP in the spring of 2008.

50. The District assigned Ms. Sosa, the school psychologist, to conduct the assessment. She established that Student's maladaptive behaviors had increased in the fall of 2007. She observed him in the ROP class before he was terminated, but the record does not establish when that observation took place. Ms. Sosa finally assessed him in her office on March 4, 2008, and used the PICS interest survey to update his vocational preferences since the last interest assessment in 2006. Ms. Sosa testified that completion of the vocational assessment was delayed because Student was frequently absent from or late arriving to school, and in addition, he refused to come to her office for the assessment. There was no contrary evidence. Ms. Sosa was persuasive that Student was terminated from the ROP program "due to concerns with his foul language, gang

related attire and in asking students what gang affiliations they had. [Student] did not have good attendance and did not complete class projects." On March 24, 2008, she issued a vocational assessment report recommending, based on his limited prevocational skills, that he needed a supported or sheltered vocational program.

51. Ms. Sosa testified that she thereafter attempted to schedule an IEP meeting with Mother to review the vocational assessment but was unsuccessful. She may have tried to call Mother; however the procedure to schedule an IEP meeting was by written notice. There is no evidence of any IEP meeting notices or letters to Mother with proposed IEP dates before the end of the 2007-2008 school year. Thus, Ms. Sosa's testimony on this point is not persuasive. The March 2008 vocational assessment was not mailed to Mother or her legal representatives. No IEP meeting was held until September 30, 2008, in connection with the subsequent school year which not at issue in this case.

52. Based on the foregoing, for the 2007-2008 school year, the District's vocational assessment was not completed and the IEP meeting was not held within 60 days of parental consent, and the report was not issued until well over 100 days later. The assessment was untimely and the District violated the legal requirements for timely conducting and reviewing an assessment. An appropriate remedy for the violation of the assessment requirements would be to order the conduct of an independent vocational assessment or reimbursement for one. However, Student already obtained an independent vocational assessment in June 2008, and does not request either another vocational assessment or reimbursement for one as a remedy. Student did not establish that he needs another vocational assessment at this time. Hence, no further remedy based on violating the assessment laws during the 2007-2008 school year was requested or is warranted.

53. In addition, based on the foregoing, the District also violated the procedural requirements to annually reassess and update Student's transition plans. No IEP meeting was held to review the vocational reassessment or Student's transition goals and services in light of his termination from the ROP class and the assessment findings. The violation significantly impeded Parents' rights to participate in the IEP decision making process and impeded Student's right to a FAPE because no assessment was delivered to them and no IEP meeting was held to address his problems before the end of the school year. The violations resulted in a denial of FAPE, and Student is therefore entitled to compensatory education based on a period of about six months of that school year.

POSTSECONDARY TRANSITION GOALS OFFERED IN THE IEPs

Measurable Goals Considering Student's Strengths, Preferences, and Interests

54. Student contends that the District's postsecondary goals for both the 2006-2007 and the 2007-2008 school year denied him a FAPE because, procedurally, they were not based on required transition assessments, not linked to Student's unique transition needs, not measurable, and were otherwise substantively inappropriate. District contends that the postsecondary goals for both years met the legal requirements and fulfilled its obligations.

55. An IEP must include measurable annual goals designed to meet the pupil's needs that result from the disability to enable him or her to be involved in and make progress in the general education curriculum and meet the pupil's other educational needs that result from the disability. The law requires that the IEP must include appropriate measurable postsecondary goals based on age-appropriate transition assessments. An IEP is to be evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. If the IEP does not conform to these

procedural requirements, it may constitute a denial of FAPE if the violation significantly impeded a parent's right to participate in the decision making process, impeded the pupil's right to a FAPE, or caused a deprivation of educational benefits. For a school district's IEP to offer a substantive FAPE, the proposed program must be specially designed to address the pupil's unique needs, and be reasonably calculated to provide some educational benefit.

56. The District's ITP form consisted of three pages labeled "Individualized Transition Plan" and was included as part of its IEPs. The first section was labeled "Desired Post-School Outcomes," to set forth a pupil's long-range postsecondary goals. The next two pages contained specific transition-related "Activities" in the following areas: instruction; community experience; development of employment and other post-school living objectives; related services daily living skills; functional vocational evaluation; and additional transition services/activities. In addition, there was a column next to each proposed annual transition activity for a statement of the pupil's present level of performance or statement of needs.

57. Student relies for the most part on Dr. Johnson's testimony and detailed written analysis of the District's ITPs for both school years in contending that the postsecondary transition goals in his ITPs were inappropriate. Dr. Johnson reviewed the District's IEPs, ITPs, and assessments, and interviewed Student and Mother. Dr. Johnson subjected all of the ITP goals for both years to an analysis utilizing "minimum accepted professional standards" as delineated in a reporting instrument called the Indicator 13 Checklist. The Indicator 13 Checklist was designed by the National Secondary Transition Technical Assistance Center (NSTTAC) to assist states in planning and reporting special education data to the United States Department of Education's Office of Special Education Planning (OSEP). Indicator 13 addresses the 13th OSEP reporting category, that of transition services. Dr. Johnson established that the Indicator 13 Checklist covers

20 specified criteria for professional standards and evidence-based practices in transition planning and services. Dr. Johnson, who is not an attorney, did not establish that the Indicator 13 checklist criteria were incorporated into the IDEA or California special education law by either amendment of the applicable statutes or regulations. There is no legal requirement that a school district's postsecondary goals and transition services in an IEP must comply with Indicator 13 in order to provide a FAPE.

58. Dr. Johnson combined education and training into one category (as did the District), and analyzed employment and independent living skills as separate categories. For each of the three main categories, Dr. Johnson established that Indicator 13 addresses six questions, imbedded within which are the 20 professional standards. The first question was "were there any measurable postsecondary goals?" Based on Dr. Johnson's analysis, he found that all of the District's ITPs for both school years involved the "clear and unequivocal absence of measurable post-secondary goals...." Consequently, the ITPs failed each of the other five questions as well. As discussed below, Dr. Johnson's general rejection of all of the District's postsecondary goals for 11th and 12th grade was not persuasive. His analytical approach did not provide for flexibility, nor did it analyze the ITPs in the context of the IEPs. For example, where there was no functional speech goal in an ITP, the fact that the IEP team had an annual IEP speech goal that included job communication was not taken into consideration.

59. Dr. Johnson's criticism of the poor organization and writing of the District's ITPs was well-founded but that did not establish that the goals were invalid. For example, he was critical of the District's use of checkboxes on the form, and insisted that postsecondary goals must be written in declarative statements. There is no such legal requirement. In the May 2006 ITP, the District's form called the long range postsecondary goals "Desired Post-School Outcomes." Under the "Education/Training" category, there were five choices with checkboxes, and the District checked both

"College/University" and "Vocational Training." Dr. Johnson concluded that these were not measurable postsecondary goals because he could not tell when they would occur. He concluded, despite the phrase "*post-school*," that none of the goals in any of the ITPs were "stated or intended" to occur after exiting or completing high school. Moreover, he opined that "vocational training" was not an observable behavior but a category.

60. Dr. Johnson criticized the District's use of the word "activities" to describe the specific annual goals proposed in the various categories to support the long range postsecondary goals in the ITPs for the 2006-2007 school year. Because an IEP is an annual program for education and services for children with disabilities, annual goals or activities constitute the transition plan or path from high school to the potential accomplishment of the long range postsecondary goals. The District's forms called the specific annual goals on the road to the postsecondary goals "activities." The District changed the label from "activities" to "goals" in the June 2007 ITP form. Whether the annual events were called annual goals, activities, or services would appear to be a matter of form, not substance and does not establish a violation of the law. Thus, Dr. Johnson was not persuasive on this point.

61. For example, in the May 2006 ITP, an activity under the category of "development of employment and other post-school living objectives" was that Student needed to enroll in ROP classes. The timeline for this to occur was between May 2006 and March 2007, before the next annual IEP. Dr. Johnson believed that this "activity" was not a goal. He determined that even the District's "outcomes" were postsecondary goals, the annual goals or activities bore no relation to long range goals. Thus, he did not see any relationship between the proposal for Student to enroll in ROP classes within the next year, and the postsecondary goal of vocational training. However, enrollment in ROP classes while at MHS is one of the District's primary transition services to provide

pupils both in-class prevocational skill training, and on the job training and experience in the community. Therefore, Dr. Johnson's testimony on this point was not persuasive.

62. The District relies for the most part on the testimony and analysis of its transition expert, Dr. Gary Greene. Dr. Greene has been a professor of special education at the California State University in Long Beach for 16 years and obtained a Ph.D in special education in 1986. He holds multiple California teaching credentials and has served on the CDE's Transition to Adult Life Leadership Team, taught college-level transition courses, and developed training materials to assist school districts to train staff in the area of transition planning and services. In addition to reviewing the District's IEPs and ITPs, Dr. Greene reviewed Dr. Johnson's report, and observed Student both in class at MHS and at his current vocational training job at the Lincoln Training Center (Lincoln), a private, nonprofit sheltered workshop center. Dr. Greene credibly established that the District's "Desired Post-School Outcomes" were postsecondary goals after high school and involved objective measurable events or behaviors that would either occur or not. While conceding that he has seen school district transition plans that did not use checkboxes and were better organized and written, he persuasively established that the District's ITP format contained all elements required by law to be addressed for transition planning.

63. Dr. Greene credibly established that the transition plan was a process that evolved over time as a pupil's preferences and skills changed. The law required the District to take Student's unique needs, strengths, preferences and interests into account to create transition goals and services in the IEPs to help prepare him to choose from a wide variety of post-school options, and to develop his prevocational, vocational, educational, employment and independent living skills to develop and grow toward gainful employment as an adult. Student did not establish that the law requires exact dates for long range multi-year postsecondary goals in order for them to be

measurable. For example, the 2006 ITP goals and services for Student were determined by his IEP team when he was 15 and a half years old and in 10th grade. The law did not require the District to pin down specific job categories for Student, or to target specific dates by which he would, for example, become a bus boy at a restaurant, or enroll in specific post-school job training. Dr. Greene was persuasive that the long range goals listed in the ITPs were measurable and referred to activities that would take place after high school. He was also persuasive that the long range goals for Student's independent living, which provided community access for recreation and living at home with his family, while not specific, were appropriate to address his needs and measurable as post-school occurrences. Dr. Greene's analysis reviewed the general contents of the ITPs and the relationship between the subjects or categories to valid transition objectives. To that extent, he was persuasive that the District's ITPs addressed everything the law required. However, Dr. Greene did not analyze the appropriateness of the ITP goals in relation to Student's unique needs. That issue is addressed below.

Postsecondary Goals for the 2006-2007 School Year

64. Student contends that the District's postsecondary goals for the 2006-2007 school year did not comply with the legal requirements for transition planning and services, were otherwise substantively inappropriate, and denied him a FAPE. District contends that the postsecondary goals in Student's ITPs for 11th grade complied with the law.

65. At the triennial IEP meeting on May 22, 2006, the team reviewed and completed the ITP portion of the May 2006 IEP documents, which offered Student postsecondary goals and transition services. The completed ITP form reflected that there was input regarding his postsecondary preferences and interests from interviews with Parents and Student, and the Choices Interest Inventory. The written comments explained that Student expressed interests in working in retail and working at an airport.

66. In the transition related area of education, the ITPs had two postsecondary education and training goals: "College/University" and "Vocational Training." The "College/University" goal for Student, who could not functionally read or write, was confusing and not supported by the District's triennial assessments. Ms. Sosa explained that community colleges offer opportunities for pupils with severe disabilities, including classes and recreation. However, Student established that attending college was not a realistic post-school outcome. He functioned at the level of a first grader at best, did not like school, wanted to work, and had little idea of what a post-high school class was or could do for him. The other choices under the education/training list included "Vocational Training" and "Adult School," which were more appropriate to meet his functional and nonacademic needs and were consistent with his assessments. All the ITPs appropriately included vocational training as a postsecondary goal. The October 2006 ITP added adult school as a third goal. By the time of the April 2007 ITP, college had been eliminated as a postsecondary goal, and the other two remained. Because vocational training was always included as a postsecondary goal, supported by annual activities, the additional inclusion of college for most of Student's 11th grade was harmless and did not constitute a procedural violation.

67. In the area of employment, under the category of "Employment/Career," the choice of "Competitive Employment" was the only box checked as Student's postsecondary employment goal for the 2006-2007 school year. This goal was chosen because the IEP team believed that if Student completed the ROP Diversified Occupations Program, he might be eligible for community employment. The evidence established that competitive employment on the District's ITP form meant the ability to obtain a paying work position in the community, outside of the environment of a supported or sheltered work site. However, the 2006 triennial IEP team and the October 2006 IEP team also discussed Lincoln. Lincoln works in partnership with schools and

employs pupils aged 16 years or older and adults with developmental disabilities who need a more restrictive and less challenging job environment. It provides on-the-job vocational training, work experience, and supervision. The District recommended Lincoln, asked Mother to visit the center, but inexplicably did not list supported or sheltered employment as a goal on the ITP.

68. The District did not assess Student's prevocational skill levels and needs necessary to become employable until March and April 2007. Since Student's prevocational skills had not been assessed, the postsecondary competitive employment goal was not based on a transition assessment as required by law. Accordingly, the District selected a postsecondary competitive employment goal for the 2006-2007 school year that was not based on a transition assessment, and committed a procedural violation.

69. In addition, following completion of the vocational assessment in March 2007, the competitive employment goal did not address Student's basic prevocational skill levels and needs. There was no evidence that a post-high school goal of competitive employment in the community was a realistic goal. Because the District knew that Student had neither vocational skills nor demonstrated prevocational skills, the other choices of "Supported Employment," and "Work/Activity Center/Program" should have been selected because they addressed Student's severe deficits and limited skills. Those were not selected as long range goals during the entire year. Based on the foregoing, the long range postsecondary goal of competitive employment was not supported by the vocational assessment, which continued the procedural violation.

70. The next question is whether this procedural violation during 11th grade significantly impeded Parents' rights to participate in the IEP process, impeded Student's right to a FAPE or deprived him of educational benefit. Although the postsecondary competitive employment goal was inappropriate, the annual transition goals or activities

to support it included appropriate goals to take ROP classes in high school. District witnesses, including Ms. Sosa, Ms. Heffel, and Ms. Arch, credibly testified that they explained to Mother at the IEP meetings that Student needed to enroll in and complete the ROP Diversified Occupations Program in order to be trained in prevocational work skills. The ROP program was a prerequisite to community work opportunities during 11th and 12th grade. From the beginning, Student's annual goals for the 2006-2007 school year, although not well written, repeated in several places that he should investigate and enroll in ROP classes to support the long range postsecondary employment goal. Thus, the annual ITP vocational goals were designed to address Student's unique needs for basic prevocational education. Mother declined to enroll Student in any ROP classes during 11th grade. Therefore, the evidence does not support Student's contention that the procedural violation regarding the postsecondary employment goal significantly interfered with Parents' participation in the IEP process, impeded Student's right to a FAPE or caused a deprivation of educational benefits. Therefore, this procedural violation was harmless and did not deny him a FAPE.

71. Some of the other annual transition goals or activities the District proposed for the 2006-2007 ITPs were not clearly written, but were otherwise measurable, based on assessments regarding his unique needs, and did not result in a procedural violation. Under the area of education and training in the triennial 2006 ITPs, for example, an annual goal or activity stated that Student needed to attend summer school. The statement of need or level of performance stated that Student needed specific instruction in reading, writing and math, and that he enjoyed computers. This statement did not describe his present levels of performance at the level of a kindergartner or first grader, as assessed in the spring of 2006, and should have been more specific. However, the IEP team was aware of that information from the assessments, it was referred to elsewhere in the 2006 triennial IEPs, and the team was

not misled. Whether Student attended summer school in the summer of 2006 was an objective, measurable event, as was enrolling in ROP, and taking the keyboarding class. Thus, the goal was appropriate and measurable. In addition, the ITPs did not have an annual goal for 11th grade in functional communication to support his transition to post-school activities, which constituted a procedural violation. However, the IEPs as a whole in fact contained a speech and language goal that addressed job-related communication, and the violation was harmless. (Factual Findings 112 through 115.)

72. The ITPs for the 2006-2007 school year provided that Student would attend unspecified field trips "when deemed appropriate." The District participated with Workability to arrange work exploration and adult education field trips into the community for all high school pupils 16 years of age or older who were enrolled in Workability or ROP, provided the pupils demonstrated acceptable behavior and their parents consented to the field trips. Field trips required the coordination of at least six high schools, participating community job sites and colleges. The District's contention that it could not specify a set number or type of field trips in the ITP was not convincing. The District had provided Workability field trips to MHS pupils for many years and knew approximately how many trips per year were conducted. There was no credible evidence that the District could not have committed to a minimum number of field trips per year for Student, provided he had appropriate behaviors and parental consent. Dr. Greene found that the goal was measurable to the extent that it could be determined whether Student went on a field trip or not, but that did not establish a basis for measurement in advance. Thus, Dr. Johnson was more persuasive that the goal was not measurable. In addition, the field trips did not specify whether they were supposed to support Student's post-high school educational goal or his post-high school employment goal.

73. The lack of a specific, measurable field trip goal for 11th grade constituted a procedural violation which significantly impeded Mother's right to participate in the

IEP process, and impeded Student's right to a FAPE since they did not know how many or what kind of field trips would occur. As a remedy for the procedural violation, Student should be provided the opportunity for vocational field trips in connection with compensatory vocational education as found below.

Postsecondary Goals for the 2007-2008 School Year

74. Student contends that the District's postsecondary goals for the 2007-2008 school year failed to comply with the legal requirements for postsecondary goals, and otherwise denied him a FAPE. District contends that the postsecondary goals in Student's ITP for 12th grade complied with the law.

75. For the 2007-2008 school year, the ITP form changed the label of the annual transition "activities" to "goals." For the categories of education and training, the District eliminated the long range postsecondary goal for college, and the postsecondary goals listed for vocational training and adult school were measurable, based on assessment, and related to Student's unique needs.

76. The ITP for the 2007-2008 school year provided that Student's only postsecondary goal for employment was, again, competitive employment. The ITP did not list other more supportive employment opportunities. The District had conducted a functional vocational assessment of Student in March 2007, and situational assessments in March and April 2007, and had the benefit of Mr. Zavala's recommendations for the basic prevocational skills Student needed to work on to prepare for employability. The District's long range postsecondary goal of competitive employment was not based on the functional vocational assessment and bore no relationship to it. The District's failure to change the postsecondary employment goal to supported or sheltered employment constituted a procedural violation.

77. However, for the same reasons as set forth in Factual Findings 70, regarding the prior school year, the violation did not constitute a denial of FAPE for the

first half of the 12th grade year because the annual vocational goals to attend the ROP and keyboarding classes were appropriate to support Student's postsecondary prevocational employment needs. The Diversified Occupations Program was the class in which Student could learn prevocational skills along with other pupils with disabilities. In light of Mr. Zavala's functional vocational assessment, Student's annual vocational employment goals to enroll in ROP classes met his needs to learn basic work skills. Mother finally consented to enroll him and he began attending the ROP Diversified Occupations Program for two class periods a day in the fall of 2007. Thus, the procedural violation did not impede Student's right to a FAPE, significantly interfere with Mother's participation in the IEP process, or cause a deprivation of educational benefits, and therefore was not a denial of FAPE.

78. For the second half of the 2007-2008 school year, the same procedural violation of having an invalid postsecondary employment goal failed to meet Student's needs due to changed circumstances which rendered the supporting annual goals and services inappropriate. As set forth in Factual Findings 48 through 53, Student was terminated from the ROP class at some point between November 2007 and March 2008. Based on that termination, Student was no longer eligible for other ROP classes or community work. After Student was no longer eligible to take other ROP classes, his annual ITP goals that called for participation in ROP classes were no longer appropriate. For the second half of the 2007-2008 school year, no IEP meeting was held to offer alternative vocational or employment goals. Hence, the District's failure to have appropriate postsecondary and annual employment goals for the second half of the 2007-2008 school year constituted a procedural violation.

79. This procedural violation significantly impeded Mother's ability to participate in the decision making process for Student's 12th grade year because no IEP meeting was held for her to receive or provide input regarding Student's inappropriate

vocational goals. The violation impeded Student's right to a FAPE because his educational program for the second semester of the 2007-2008 school year contained inappropriate postsecondary and annual vocational goals that did not support his transition needs. Thus, the violation constituted a denial of FAPE. As discussed further below, Student is entitled to compensatory education as a remedy.

80. Student did not establish that any of the other annual goals for the 2007-2008 school year were not measurable or based on his unique needs, except for the annual field trip goal. The ITP for 12th grade again provided that he would attend field trips with Workability "when deemed appropriate." As set forth above with respect to the same goal for 11th grade, this annual goal was vague and not measurable, and constituted a procedural violation. The lack of a specific, measurable field trip goal significantly impeded Mother's right to participate in the IEP process, and impeded Student's right to a FAPE since they did not know how many, or what kind of field trips would occur. For the 2007-2008 school year, Student was deprived of educational benefit as a result of the violation, because the District did not offer any vocational field trips in 12th grade at a time when he needed community occupational experiences. As a remedy for the procedural violation pertaining to the 12th grade field trip goal, Student should be provided the opportunity for vocational field trips in connection with compensatory vocational education as found below.

TRANSITION SERVICES TO SUPPORT STUDENT'S TRANSITION NEEDS

81. Student contends that the District failed to provide sufficient transition services to meet his unique needs, taking into account his strengths, preferences, and interests, and to support his postsecondary goals and transition to post-school activities for both school years. Student claims that he should have received more vocational education; remedial math and reading; increased speech and language therapy; and

vocational counseling and guidance. District contends that it offered appropriate transition services to support Student's postsecondary goals.

82. The IEP must contain transition services needed to assist the pupil in reaching his or her postsecondary goals. The transition services or "coordinated set of activities" must be based upon the individual needs of the pupil, "taking into account the strengths, preferences and interests of the pupil." Transition services include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and acquisition of daily living skills. The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist the pupil to benefit from education.

Vocational Education

83. Student contends that the District did not offer or provide him with sufficient vocational education and experience during 11th and 12th grade, including ROP, Workability, Lincoln, electives, and vocational opportunities such as community work experience and field trips. The District contends that it offered and provided many vocational education opportunities and experiences and complied with the law.

84. As set forth in Factual Findings 14 through 16, the 2006 triennial IEPs and ITPs offered the Workability and ROP programs, including the ROP Diversified Occupations Program. The District recommended that Student should start the Diversified Occupations class in the fall of 2006. Mother consented to the IEPs in June 2006, and at the beginning of the 11th grade in the 2006-2007 school year, Student's ITP provided that he would attend the ROP Diversified Occupations Program. At the October 2006 IEP meeting, Ms. Heffel, a Workability specialist, again explained the Diversified Occupations Program to Mother and her attorney. However, Mother did not submit the required forms to enroll Student in the Diversified Occupations Program at any time during the 2006-2007 school year. There was no evidence explaining why she

did not do so. Therefore, Student did not attend the ROP class during 11th grade. In addition, the IEP team discussed Lincoln as a sheltered employment opportunity.

85. At the IEP meeting in January 2007, Mother consented to the on-campus library job for one period a day and related situational assessment of Student. In addition, MHS provided him other volunteer job or project assignments on the campus during 11th grade such as watering plants, sharpening pencils, and taking classroom attendance reports to the office. The District offered to provide Student other work experiences on campus, including shadowing or working with maintenance staff or working in the cafeteria, but Mother declined to accept anything else and did not enroll Student in the Diversified Occupations Program for the spring semester.

86. Student's ITPs for 11th grade provided, as a goal or transition service, that he would attend field trips with Workability. Ms. Arch was persuasive that she announced each field trip in the classrooms, delivered sign-up and parental consent forms to the teachers and students, and mailed the forms to the parents. For the 2006-2007 school year, Ms. Arch established that Student and Mother were notified of, and invited to two vocational field trips, one to Embassy Suites, to explore jobs in the hotel industry, and one to Home Town Buffet, to explore jobs in the restaurant or food industry. Even though Ms. Arch's testimony about when the trips occurred was confusing and lacked some credibility (as described in Factual Findings 94 through 96), she was persuasive that she never received any consent forms from Parents for Student to attend field trips during that school year, and that he therefore could not have, and did not, attend either field trip with MHS.

87. Based on the foregoing, for the 2006-2007 school year, the District offered and provided Student on-campus vocational education and training opportunities, and Mother and Student declined all of them except the Workability job in the school library.

88. Dr. Johnson testified that the District should have offered Student vocational experiences in the community as well. However, since Student did not enroll in the ROP class during 11th grade, he was not eligible for community work experience. Additionally, Student and Mother did not submit consent forms for his participation on two vocational field trips. Hence, Student did not establish that the District failed to offer or provide him with appropriate vocational education. He obtained educational benefit from the programs in which he participated. The District met its legal obligation to offer vocational education and training as part of the transition services, and no procedural violation occurred. Student was therefore not denied a FAPE during 11th grade due to lack of vocational education or training opportunities.

89. For the 2007-2008 school year in 12th grade, the fall curriculum began with a blended program that focused on vocational education and functional skills instead of academics. Student received four periods of vocational education daily (first period for the library job, fifth and sixth periods combined for the ROP class, and the keyboarding class). Student was terminated from the ROP Diversified Occupations class at some point between November 2007 and March 2008. He was therefore no longer eligible for community work experience because he did not successfully complete the ROP prevocational classroom training.

90. Student's maladaptive behaviors had been assessed in 2006 and addressed by a behavior support plan and a full-time TCS aide. Student's maladaptive behaviors increased in the fall of 2007. There was no evidence as to why they increased, what specific vocational curriculum the class worked on in the fall of 2007, or what specific problems Student may have encountered or generated, and Ms. Negretti did not testify. Due to Student's behavioral problems, he was frequently absent from, or tardy to his keyboarding class, the ROP class, and his compensatory transition tutoring sessions, and he engaged in disruptive behaviors.

91. By way of hindsight, Student's behavioral problems that arose in the fall of 2007 suggest his behavior support plan may have needed to be re-examined; and/or that he may have needed some support to be successful in that class for the first semester of 12th grade that was not addressed. However, Student's complaint did not raise any issue regarding his behavior support plan during either school year. Student did not claim that his failure to complete the ROP class during 12th grade implicated the District's behavioral services. Therefore, the behavior support plan is not an issue in this case. Instead, Student argues that the District should have provided more vocational education and opportunities during 12th grade. Since there is insufficient evidence to understand what happened, and the IEP is not to be evaluated in hindsight, Student did not bear his burden of proof on this issue.

92. Based on all of the foregoing, for the first half of the 2007-2008 school year, the District met its legal obligation to offer Student vocational education and training as part of the transition services, with the exception of community or field trip experiences, and no procedural violation occurred. Student did not produce evidence that the ROP class was not designed to address his unique needs. The vocational education and training was reasonably calculated to provide some educational benefit in addressing Student's basic need for prevocational skills and substantively provided a FAPE. Student was therefore not denied a FAPE during the first half of 12th grade due to lack of vocational education or training.

93. For the second semester of the 2007-2008 school year, after Student was terminated from the ROP program, the District moved him to an SH/SDC class where he received vocational education and training in basic clerical or office skills. After having been terminated from the ROP Diversified class, the District did not abandon his vocational education and training, but provided another prevocational class in clerical skills. The class addressed basic functional vocational skills for severely handicapped

pupils. Student did not establish that the SH functional clerical skills class did not meet his unique needs or was not reasonably calculated to provide some educational benefit.

94. The law requires that transition services should include community experiences. Student's 12th grade ITP provided a goal for him to have attended field trips with Workability by June 2008. He attended two Workability field trips during that school year, one to Rio Hondo Community College and one to Cerritos Community College, to tour the campuses and learn about the educational opportunities, including art, media, and academic classes, the disabled student program offices, and the recreational opportunities for pupils with severe disabilities. Thus, the District complied with the legal requirement for community experiences and there was no procedural violation.

95. However, on the issue of the sufficiency of the District's vocational education and training for Student, the District did not invite Student to attend any employment related field trips in 12th grade. When the ALJ questioned why no job related field trips were conducted during the 2007-2008 school year, Ms. Arch changed her testimony and claimed that the Home Town Buffet restaurant field trip (Factual Finding 86), actually occurred in January of 2008 instead of during the prior school year. Ms. Arch's testimony on this point was not credible as she then began changing dates and got confused. She had no documentary records about the field trips to substantiate her testimony. There is no credible evidence that any field trip to a community job site was offered to Student during his 12th grade year, at a time when he needed exposure to work opportunities to experience for himself what was possible for his vocational future. Dr. Johnson was persuasive that, due to Student's cognitive limitations, concrete thinking, and lack of exposure, he needed vocation-related field trips to experience possible job opportunities for himself.

96. Based on the foregoing, for 12th grade in the 2007-2008 school year, the District met its legal obligations to provide vocational education and training that met Student's unique needs and supported his transition goals, except for community experiences. The District did not take Student on any trips into the community for exposure to job possibilities during his 12th grade year. Thus, the field trips did not address his unique needs and were not reasonably calculated to provide him with educational benefit. As a result, the lack of vocation-related field trips denied him a FAPE in 12th grade. As discussed below, Student should receive compensatory education as a remedy.

Remedial Reading and Math

97. Student contends that for both school years the District's ITPs failed to offer and provide Student with remedial reading and math education as transition services that were necessary to support his progress toward postsecondary life, and thereby denied him a FAPE. The District contends that it provided appropriate reading and math instruction and was not obligated to provide additional instruction or services.

98. For the 2006-2007 school year, the IEP team placed Student in Ms. Johnson's MM/SDC for academic instruction for five hours a day at Mother's request. The class emphasized academic instruction including English, reading, writing, and math as modified for each pupil's unique needs. The triennial assessments established that Student was performing at a kindergarten to first grade level in reading, writing, and math, and was unable to complete work independently. In 11th grade, Student had an annual reading goal to read 10 one syllable words and 10 sight words at the kindergarten level. He had a math goal to add and subtract one- and two-digit problems at the first grade level.

99. At the October 2006 IEP meeting, in connection with Student's complaint to CDE about the 2005-2006 transition plan and services, the District offered to provide

Student with 30 hours of compensatory remedial transition tutoring. After parental consent in January 2007, the District began providing Student with compensatory remedial transition tutoring beginning in March 2007. The tutor, a special education teacher, worked with Student after school twice a week for one hour each session, and focused on his computer skills, reading, spelling, simple addition and subtraction, communication of his post-school preferences and interests, common knowledge problems, story comprehension, and counting coins. Student missed many sessions, had behavioral problems during some sessions, and performed well in others. The tutor reported that he knew the value of each coin but could not count above 80 cents.

100. As found in Factual Finding 35, Ms. Sosa assessed Student's behavior in the November 2006 FAA, and determined that, when he was off task, he engaged in inappropriate attention seeking and aggressive behaviors. Ms. Sosa found that the academic MM/SDC negatively impacted his behaviors because he was frequently overwhelmed and engaged in disruptive off task behaviors. She recommended changing Student's educational program from academics to functional skills but Mother did not consent. The ITPs all provided as a transition goal or service that Student needed to take summer school for reading, writing and math instruction.¹⁷

101. Based on the foregoing, the District's ITPs recognized that Student needed extra work in reading and math to support his transition goals, and no procedural violation was committed. The District's reading and math instruction for Student for the 2006-2007 school year was designed to meet his unique needs, and was reasonably calculated to provide some educational benefit, including functional transition goals for remedial instruction. To the extent that the academic content was somewhat above his

¹⁷ No evidence was produced as to whether Student ever attended summer school for remedial instruction.

cognitive abilities, Mother declined the District's offer to change the program to address more functional skills. Student therefore did not establish that the reading and math instruction denied him a FAPE.

102. In June 2007, Mother agreed to the District's proposed change to a blended program in which, for the 2007-2008 school year, Student attended a functional math class in the SH/SDC. As a result of the change to a more functional skills program, the November 2007 IEP team developed two new goals, a vocational reading goal to read workplace signs by June 2008, and a math goal. Student's IEPs all noted that he needed direct instruction in reading, basic math skills and writing, and the District provided that instruction. No evidence was produced to suggest that the functional math class did not address his unique needs or was not reasonably calculated to provide some educational benefit.

103. Dr. Flores, who independently conducted a psycho-diagnostic evaluation of Student in August 2008, testified persuasively that due to Student's mild mental retardation and other deficits, further academic progress in reading is highly doubtful. Dr. Flores was persuasive that Student may read at a kindergarten to first grade level for the rest of his life, but he may be able to "upgrade" his adaptive or functional reading, such as how to buy a loaf of bread.

104. As determined above, there is no evidence that the District's provision of reading and math instruction to Student during the 2006-2007 and 2007-2008 school years was deficient or inappropriate in the context of his transition plans. Therefore, the District's provision of reading and math instruction did not deny Student a FAPE.

Speech and Language Services

105. Student contends that the District's ITPs failed to offer or provide him with sufficient speech and language therapy as a related service to support his progress toward postsecondary life. Student contends that his speech and language goals and

services for both school years were insufficient to address his transition needs, and thereby denied him a FAPE, because they remained stagnant, were not long enough, and were not referenced in his ITPs or coordinated with any postsecondary transition goals or services. The District contends that the speech and language goals and services for both years were appropriate to meet his transition related speech and language needs.

106. A school district must offer a pupil related services if such services may be required to assist the child in benefiting from special education. The IEP must contain transition services needed to assist the pupil in reaching his or her postsecondary goals, including related services. Transition services include related services to support the long range postsecondary goals.

107. As set forth in Factual Findings 17, the District conducted a triennial assessment of Student's speech and language needs, and relied on the assessment to offer speech and language therapy as a related service for the 2006-2007 school year. Student's IEPs provided for two 30-minute sessions of speech and language services each week. During those sessions, District's speech and language therapist, Roxanne Bickel, provided both a small group session in the speech classroom for 30 minutes, and collaboration with Student, his teachers and aides in the classroom for 30 minutes a week, to train and prompt them to use appropriate nonverbal and verbal prompts to help improve his communication and articulation. Student had a speech and language goal that addressed both communication and articulation. Thus, Student only had one direct therapy session for 30 minutes a week because the other 30 minutes was used in collaboration with him or school staff, and he rarely had an individual session with the therapist. The District provided these services.

108. The annual speech and language goal actually addressed multiple goals, all measured by teacher cueing and 80 percent accuracy: (1) reducing off task behavior;

(2) attending to visual and verbal cues from his listeners to improve his speech clarity, by speaking slower and attending to beginning and ending consonants and blends; (3) attending to language clarity; (4) attending to requests for more information with five to eight word utterances; and (5) understanding main problems and identifying alternate solutions. These goals addressed Student's needs in the areas of off task and attention seeking behaviors, expressive and receptive oral communication, and articulation. These were related to his transition skills that he needed to be successful on a job after high school. The goals expressly stated that they would help Student's oral communication "in the classroom and on the job."

109. Ms. Bickel has been employed by the District as a speech and language specialist for 25 years. She has a Bachelor's Degree in speech and language and a Master's Degree in education administration. She has over 30 years of experience in speech and language and holds a lifetime special education speech and language credential. In addition, she received training in transition planning and ITPs from both the District and the SELPA. Ms. Bickel provided speech and language services to Student since ninth grade. She recommended the small group and collaborative models to his IEP teams for several reasons. Student had a short attention span of not more than five minutes on nonpreferred activities, and up to about 10 minutes on preferred activities. Hence, a session longer than 30 minutes was not an effective use of instructional time to address his unique needs and lead to educational benefit. Student had the opportunity to work on pragmatic communication with another pupil in the small group setting, which supported his progress. Ms. Bickel determined that Student had difficulty generalizing in different settings. Consequently, her collaboration with him, his teachers and his aide in the classroom was intended to help generalize the prompts, reminders, and repetitions Student needed, so that he would be able to benefit from them during the day in different classes and on the campus.

110. Ms. Bickel credibly established that for the 2006-2007 school year, Student made modest progress on his speech and language goals in the small group sessions, but did not otherwise make progress on the goals in his classes with the collaborative approach. Student was resistant and did not want to work with her outside of the speech room. Therefore, for the 2007-2008 school year, Ms. Bickel increased the time spent in small group sessions with Student and decreased, but did not reduce the time spent in collaboration, within the context of the same two 30-minute weekly sessions. During the 2007-2008 school year, Ms. Bickel increased focus on Student's articulation deficits. Student's speech was understandable only about 70 percent of the time by someone familiar with him, and significantly less so by someone who was not familiar with him. Ms. Bickel worked during both years to increase Student's strategies and tools for communication, including eye contact, paying attention to verbal and facial cues, articulating words more clearly, and slowing his speech down.

111. Ms. Bickel testified that she understood and performed her role to work with Student in developing his functional workplace and social communication skills, such as ordering food. She worked with Student in the speech room on appropriate workplace communication, and worked on scenarios such as asking someone (an employer or coworker) to repeat the instructions, and to use more words to say what he wanted to say, such as that he needed to use the restroom; however, the record is unclear how often this occurred. Student made some progress in the speech room but not in other classes or campus activities. Ms. Bickel testified persuasively that Student made some modest progress in pragmatics, attention, eye contact, reading nonverbal cues, and speaking longer sentences. However, as set forth in Factual Findings 116 through 122, Student needed additional speech and language services to progress.

SPEECH AND LANGUAGE GOALS IN THE ITPs

112. Student contends that the District failed to provide him with appropriate speech and language services as a related service to support his postsecondary transition goals during the 2006-2007 and 2007-2008 school years. The District contends that the speech and language services it offered and provided for both school years complied with the law.

113. For the 2006-2007 school year, there were no speech and language goals and services listed in the ITPs. Rather, the goals were listed as separate annual goals, and the speech and language therapy was listed as a separate related service within the IEP documents containing the ITPs. Therefore, for 11th grade, the ITPs did not contain an express transition goal for Student to support his functional oral communication needs.¹⁸ For 12th grade, the District added a speech and language transition goal to the June 2007 ITP. It provided that the speech and language specialist would prompt Student to use appropriate job-site communication between June 2007 and June 2008. Overall, the annual IEP speech and language goals for both years stated that working on the goals would facilitate Student's meeting of standards for communication "in the classroom and on the job."

114. Although the transition statutes and regulations do not state where in the IEP the transition goals and services should be listed, the law requires them to be clearly stated in the IEP. The IEP should be read as a whole document. Both Dr. Johnson and Dr. Greene testified persuasively that the IEP should clearly identify the postsecondary goals and transition services as such in a separate transition portion of the IEP. Since Student's severe speech and language deficits were material to his transition planning and

¹⁸ The ITPs did support postsecondary needs related to Student's functional written communication by having Student enroll in a keyboarding class.

postsecondary success, the District should have had a functional speech and language goal (and a link to the speech and language services) in the ITPs to support his transition to post-school life.

115. Based on the foregoing, the failure to identify a speech and language goal as part of the transition planning for Student for the 2006-2007 school year constituted a procedural violation. However, the evidence established that a significant focus of the District's speech and language goals and services during both school years was to support Student's transition to post-school activities. Ms. Bickel focused on supporting Student's development of functional language for basic life skills, such as communicating with a co-worker or ordering food from a menu, and articulation practice, such as addressing error patterns. Mother was present at the IEP meetings where Student's speech and language goals and services were discussed, and she was informed of the nexus of the services to job communication. Thus, the District's failure to expressly list a transition related functional speech and language goal in the ITPs for 11th grade did not significantly impede Parents' participation in the decision making process or impede Student's right to a FAPE. The violation was therefore harmless error and did not deny Student a FAPE. For 12th grade, the ITP had an express speech and language goal and as a result, there was no procedural violation, and no denial of FAPE.

INDEPENDENT SPEECH AND LANGUAGE ASSESSMENT

116. Student was assessed by an independent speech and language specialist, Karen Schnee, on June 19, 2008. Ms. Schnee has been a licensed speech and language pathologist since 1985, with a Bachelor's degree in child development, a Master's degree in special education, with an emphasis in learning and reading disorders, and a Master's degree in communication disorders. She has many years of experience as a speech pathologist, and has been in private practice since 2001 as a consultant and diagnostician for children and adults with specific learning disabilities and

developmental delays. Ms. Schnee reviewed Student's school records, administered various assessment tests, and obtained an informal language sample. Ms. Schnee found Student to be "severely language disordered" with significant deficits for language comprehension and verbal expression, poor auditory processing, discrimination, and sequential memory skills which interfere with his ability to interpret what others tell him. She found that his severe articulation deficits resulted in his speech being only 60 percent understood to the untrained listener. Her findings were consistent with those of Ms. Bickel.

117. Ms. Schnee recommended that Student needed a great deal of repetition and a mutisensory learning paradigm in order to learn. She recommended two weekly sessions for 60 minutes each per week in both individual and small group settings. She recommended that the focus of the sessions should be on developing functional language for basic life skills, such as ordering food from a menu, and that articulation practice should address error patterns, such as final consonants in words, rather than on teaching individual sounds. Ms. Schnee testified that the District's continued use of the collaborative model was inappropriate as Student did not make progress using it. Aside from the recommendation for a focus on functional language and articulation, Ms. Schnee made no analysis of or recommendation about Student's communication needs specific to his transition to postsecondary activities.

118. Ms. Bickel read Ms. Schnee's written report prior to the hearing. Ms. Bickel testified persuasively that there was no new information in Ms. Schnee's report that the District did not already know about Student's speech and language deficits. The evidence established that Ms. Schnee's findings and testimony corroborated the District's assessments and the testimony of District personnel, including Ms. Sosa and Ms. Bickel. Student is easily frustrated in his attempts to communicate and tends to give up easily. He is not able to understand abstract concepts, and as a result his problem

solving ability and judgment are poor. Mother, Ms. Schnee and all of the District witnesses established that Student must be closely supervised around his peers as he is susceptible to being swayed by others and exercising poor judgment in order to gain attention. However, as set forth below, Ms. Schnee was persuasive that Student needed more direct speech and language services in order to progress.

SUFFICIENCY OF SPEECH SERVICES TO SUPPORT TRANSITION

119. As set forth in Factual Finding 107, for the 2006-2007 school year, Student received only one 30-minute session per week, or about 2 hours per month, of direct small group speech and language services, and another 30 minutes a week, or 2 hours per month, of Ms. Bickel's collaboration across school settings. For the 2007-2008 school year, For the 2007-2008 school year in 12th grade, Ms. Bickel was credible that she increased the direct therapy by having two sessions of direct therapy in one week, and then one each of direct and collaborative services the next week, or about half again what had been provided. Student received about fifty percent less collaborative services and a corresponding increase in direct therapy, or about 3 hours a month of direct therapy and 1 hour a month of collaboration. Ms. Bickel testified that she believed the continued but diminished use of the collaborative model provided educational benefit, but her reasoning was unclear since Student made no progress with the collaborative model. He responded negatively to Ms. Bickel's collaborative speech services in front of his peers and did not make progress. She should have provided consultation to the school staff, instead of collaboration, and provided more direct therapy to Student.

120. Given the severity of Student's speech and language deficits and the postsecondary consequences of a failure to be able to communicate his wants and needs, Ms. Schnee was persuasive that Student should have received more direct speech and language services to work on his functional communication, whether individually or

in small group, due to his need for a more intensive level of repetition and prompting. Ms. Bickel was persuasive, however, that the two 60-minute speech and language sessions recommended by Ms. Schnee would have been inappropriate because, due to his attention deficits, he demonstrated difficulty completing 30 minute sessions.

121. The evidence supports a finding that Student should have received two 30-minute sessions per week of direct small group and individual speech and language therapy in both 11th and 12th grades. Based on the foregoing, the District's failure to provide two 30-minute sessions per week of direct small group and individual therapy substantively was not designed to meet Student's unique needs, and was not reasonably calculated to provide some educational benefit. The District's failure to increase Student's speech and language services for both school years occurred during a time when Student's interest in making vocational progress increased, he learned through the library job that he could be successful, and his vocational and postsecondary transition goals called for functional oral communication training. The lack of sufficient direct speech and language services to support Student's impending transition to adulthood therefore substantively denied him a FAPE.

122. Based on the above findings, the District should have added 30 more minutes a week to Student's IEP for direct speech and language therapy for both school years. The District's school year was 44 weeks, including the extended school year in the summer. For the 2006-2007 school year, therefore, the District should provide compensatory direct speech and language services to Student in the total sum of 22 hours. For the 2007-2008 school year, the District should have provided another 30 minutes per week for half of the school year. Student is therefore entitled to compensatory direct speech and language services for 12th grade in the total sum of 11 hours, for a total of 33 hours of direct compensatory services. Due to Student's

resistance to Ms. Bickel's services, the compensatory speech and language services should be provided by an NPA.

Vocational Counseling and Guidance Services

123. Student contends that the transition services during the 2006-2007 and 2007-2008 school years should have included vocational counseling and guidance, such as a job coach, as an appropriate related service to support his postsecondary transition goals. The District contends that it provided sufficient vocational education and training.

124. The District did not offer or provide vocational counseling and guidance as such for either school year, either in the IEPs or in the ITPs. The IEPs provided for a team of personnel along with Student, his aide and his Mother, including a career counselor from the Career Center, his IEP case manager and teacher Ms. Johnson, Workability specialist Ms. Arch and others. The District IEP team members provided vocational information and guidance to Mother and Student beginning in April 2006. Mother disregarded the District's recommendation to enroll Student in Workability and ROP for over a year thereafter. The ROP Diversified Occupations Program class was designed to provide Student with vocational education, training, and guidance on appropriate work behaviors and prevocational skills. The fact that Student may have preferred to have a job coach rather than the ROP class, or in conjunction with it, does not establish that the class was not designed to meet his needs or reasonably calculated to provide some educational benefit.

125. After Student enrolled in the ROP program in the fall of the 2007-2008 school year, his maladaptive behaviors worsened. After Student was terminated from the ROP class, his poor performance in the class should have been reviewed by an IEP team. The District failed to hold an IEP meeting for either the March 2008 assessment or the annual review. Thus, while there is insufficient evidence in the record from which to determine that Student needed a job coach at the beginning of the 12th grade school

year in order to be successful in the ROP class, the evidence established that Student needed individual vocational counseling upon being terminated from the class.

126. Student's vocational expert, Ms. Brincko, testified that Student should have had a one-to-one job coach or career counselor to help him explore vocational options and teach appropriate behaviors during both 11th and 12th grades. While Ms. Brincko's testimony was unpersuasive that he needed individual coaching for both years, the evidence showed that, due to Student's limited attention span, cognitive and speech abilities, and lack of exposure to realistic options, he needed additional vocational support for the second half of his 12th grade year. A career counselor or job coach would have provided functional information and training to help him focus on his postsecondary life activities after he was terminated from the ROP class. Thus, for the second semester of the 2007-2008 school year, in addition to placing Student in a class for functional clerical skills, the District should have provided him with additional, individual job counseling or coaching to address his employability and postsecondary employment goals.

127. Based on the foregoing, for the second semester of the 2007-2008 school year, Student needed a job counselor or coach assigned to work individually to assist him to focus and progress toward realistic postsecondary employment goals. The District placed him in a functional clerical skills class but did not provide him any further vocational guidance. Accordingly, the District's failure to provide Student with a one-to-one job coach or career counselor for the second semester of the 2007-2008 school year did not address his unique needs, was not reasonably calculated to provide educational benefit, and consequently denied him a FAPE. Student is therefore entitled to compensatory education, as discussed below.

Responsible School Staff Identified in the ITPs

128. Student contends that the District's ITPs for both school years failed to identify adequate school staff responsible for providing transition services, and placed too much of the responsibility on him. The District contends that the ITPs listed the types of persons or agencies responsible for each annual goal.

129. Student did not provide any legal authority for the proposition that the District's IEPs and ITPs are required to identify the District staff responsible for implementing its educational programs and services. The ITP is required to contain the transition services that the IEP team determines are needed to assist a pupil in reaching his long range postsecondary goals.

130. In the District's ITP forms included in Student's IEPs for the 2006-2007 and 2007-2008 school years, next to the annual activities or goals, there was a box entitled "Responsible Person or Agency." The annual goals listed responsible school personnel by job category or title, not by name. For example, Student's teacher and case manager, was listed often as it was her responsibility to oversee his IEPs and ITPs. The ITPs for both years identified the Career Center counselor as a responsible adult on many of the goals, and the Workability specialist, ROP teacher, his TCS aide, and Parents were listed on many goals. Thus, even if not required by law, a team of people who were responsible to work on Student's goals with him were appropriately identified in the ITPs for both school years.

131. Despite his young developmental age, Student was validly listed as a responsible person for the annual goals because he was in 11th and 12th grade in high school and was encouraged to take an active role in his own transition plans for postsecondary life. Student criticizes the May 2006 ITP because two goals, one to work toward obtaining a California ID, and one to explore community activities such as group sports, only listed Student as the responsible person. In all subsequent ITPs including

the same or similar goals, the omission of responsible adult staff for those goals was corrected. Thus, the omission of an identified adult to assist Student on those two goals was an error which was subsequently corrected at the October 2006 IEP meeting, only a month into the 11th grade school year. This minor error on two goals did not result in a procedural violation. Even if it did, Student did not establish any loss of educational benefit as a result and it was immediately corrected. Parents were appropriately added on the California ID goal because they would need to take Student to the Department of Motor Vehicles. Based on the foregoing, Student did not establish that the District's transition plans for both school years failed to identify responsible staff, or placed too much responsibility on Student or Parents. Accordingly, no denial of FAPE was established.

Frequency, Location and Duration of ITP Services

132. Student contends that the District's ITPs for both school years failed to identify the frequency, location and duration of transition and related services. District contends that the ITPs provided appropriate information required by law.

133. Generally, an IEP is required to set forth the frequency and duration of educational programs and related services. The law regarding the provision of transition services "needed to assist the pupil in reaching the postsecondary goals" is silent as to the level of specificity required. Student contends that transition services should be subject to the same statutory requirements as any other service in an IEP.

134. However, Student's expert witness, Dr. Johnson, acknowledged during his testimony that the nature of the postsecondary transition services did not lend itself to the same type of analysis as that for an annual academic goal or service, where goal progress is measured pursuant to repetitive tests or trials and services were often more fluid. Postsecondary transition services span several years with broad-based objectives that progress and change. Hence, Dr. Johnson conceded that the standards for

transition services are less stringent than those for annual IEP services in terms of specificity. He was persuasive that to support postsecondary transition goals, trying to establish a written plan for the frequency and duration of the transition services is often difficult if not impossible to predict.

135. The District's ITP services all had beginning and ending dates. While Student's attorneys were critical that more than just an annual time-frame was required for Student's transition services, such as meeting with the Regional Center, or attending an ROP class, the evidence established that each service was offered in context. The fact that the ITP did not establish how frequently the Regional Center met with Student was not critical. Regional Center attended many of the IEP meetings, had its own statutory obligations to Student, and there is no evidence that the lack of such specificity harmed Student. The ROP class had a specified schedule each semester that was well documented. The District could not reasonably establish a date by which Student would become employed at an identified job given the nature of his deficits and limited skills. As set forth in Factual Findings 72, 73, and 80, the number of measurable field trips each year was required, but Student did not establish that the District was required to say how often they would occur. Therefore, the evidence did not establish that the District failed to comply with a requirement for the ITPs to set forth the frequency of transition services, and the ITPs all had ending dates that established the duration of each service. Accordingly, there are no violations and Student was not denied a FAPE on this basis.

REMEDIES AND COMPENSATORY EDUCATION

136. When a LEA fails to provide FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. Compensatory education is a form of equitable relief that may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. The purpose of compensatory education is to ensure that the student is appropriately

educated within the meaning of the law. Where the actions of parents are unreasonable, equitable relief may be reduced or denied.

137. Determining that there is a violation of the assessment laws does not require a finding of a denial of FAPE. Remedies for violations of the assessment laws generally involve finding assessments to be appropriate or not, ordering assessments to be conducted, or reimbursing a party for an independent assessment. Based on Factual Findings 27 through 29 and 45, the District's violations of the legal requirements for assessments during the 2006-2007 school year were remedied by the District's subsequent conduct of a functional vocational assessment in March 2007, and Student's independent vocational assessment in June 2008. As a result, no further remedy is warranted.

138. Based on Factual Findings 49 through 53, for the 2007-2008 school year, the District denied Student a FAPE in connection with its failure to timely conduct a vocational assessment following parental consent in November 2007, and failure to convene any IEP meeting prior to the end of the 2007-2008 school year. The violations were remedied by Student's independent vocational assessment in 2008, and no further remedy was requested or is warranted.

139. Based on Factual Findings 54 through 80, for both 11th and 12th grades, the District failed to have an appropriate postsecondary vocational employment goal, or annual field trip goals. However, for 11th grade and the first half of 12th grade, the violations did not deny Student a FAPE because the annual vocational goals and services supported his unique transition needs and he was offered two vocational field trips. These same procedural violations denied Student a FAPE during the second half of 12th grade in the 2007-2008 school year, when the District also failed to have appropriate annual employment goals and services, and failed to provide vocational field trips or job counseling after Student was terminated from the ROP program. Based on these

findings, Student is entitled to compensatory education for each of the separate violations based primarily on the same six month period of time in the second semester of 12th grade.

140. Student's claim that he suffered two years' worth of "lost instructional time" is not substantiated by the evidence, except in the area of speech and language therapy. The District offered many transition and vocational services which Mother declined or delayed to accept. Moreover, the majority of the violations warranting compensatory education occurred during the last semester of Student's 12th grade year. While the District's delay in completing the March 2008 assessment was due in large part to Student's lack of cooperation, there was no evidence that the District acted before the end of the school year to modify his IEP or ITP goals and services after he was terminated from the ROP program. Because of Student's age, the violations had a cumulative effect, as Student is now over 18 years old and his opportunity to build a successful foundation of prevocational work skills during high school was impeded due to the violations.

141. Student's vocational expert, Ms. Brincko, testified credibly that Student is not employable at the present time. Based on her June 2008 vocational assessment, she established that Student's "workplace maturity level" needed to be developed to avoid failure in employment situations, such as having a conflict with an employer or being late.

142. Dr. Johnson was persuasive that Student is at risk of failure in the postsecondary transition areas of education, training, employment, and independent life skills. Dr. Johnson established that the last year or two of high school for Student was a critical time to provide transition goals and related services to meet his unique needs to help avoid the dangerous pitfalls of gang affiliation and adult criminal incarceration.

143. Dr. Flores, Student's independent psychological assessor, established that Student is not capable of being gainfully employed in competitive employment at the present time. Dr. Flores established that Student requires a sheltered workshop modality to support his transition needs to learn vocational skills in a structured environment that does not involve reading or complex decision making, and which has repetitive but varied tasks to take his short attention span into account. Student is now attending Lincoln pursuant to an IEP with the District, and is engaged in vocational training and education in that facility.

144. The District contends that it should not be found to have denied Student a FAPE, or at least should not be ordered to provide any compensatory relief to him, because CDE found the District to be in compliance with its corrective action orders, and because Dr. Greene analyzed Student's ITPs and determined that they complied with the postsecondary transition laws. However, Dr. Greene did not analyze the ITPs in connection Student's unique needs but established that the ITPs contained all of the types of information required by law, even if they were not very well written.

145. As to CDE, from March 2006 to January 2008, CDE's special education consultant Terri Poulos monitored the District's compliance with its corrective action orders and found that the District complied in full with all of its orders by January 2008. First, the matters investigated pertained to a prior year not at issue in this case, and the corrective action orders were not presented at hearing. Secondly, the fact that CDE may have determined, similar to Dr. Greene, that the District's ITP forms for 11th and 12th grade contained all information required by law, does not amount to a determination that the content of the postsecondary goals and services met Student's unique needs or provided him a FAPE.

146. Taking the foregoing into consideration, Student should be awarded sufficient vocational counseling, coaching, guidance and training to compensate him for

the loss of educational benefit that resulted from the District's denials of FAPE. Student requested 440 hours of compensatory vocational services at the rate of five hours per week for two years. The evidence does not sustain that level of intensity based on the nature of the violations, Mother's and Student's own delays, and Student's distractibility and deficits. Therefore, based on a 44-week school year, including the extended school year, the compensatory amount is calculated as the equivalent of three hours of compensatory vocational services per week for one year, or 132 hours, plus additional hours for supervision and consultation, for a total of 160 hours of vocational compensatory education. Since no evidence was provided as to suitable ratios for supervision and consultation hours as compared to service hours, the ALJ has estimated in this total an approximate amount of 10 percent extra for supervision and 10 percent extra for consultation, for purposes of calculating the amount of compensatory education. Bearing in mind that the violations occurred during a critical time in Student's transition to adulthood, and, the District shall therefore be ordered to provide 160 hours of vocational counseling, coaching, training, and guidance from an independent NPA. The total hours shall include direct services (one-to-one and/or small group) at school and in the community, including supervision and consultation with Student's IEP team and teachers. However, the total 160 hours may be allocated and delivered as reasonably provided for by contract between the District and the NPA. Due to Student's demonstrated attendance problems, the District will be given longer than one year to provide the services.

147. In addition, based on Finding of Fact 122, Student is entitled to compensatory speech and language therapy services, related to his transition need, and calculated on the basis of a 44-week school year, to include 33 hours of direct speech and language services. Since no evidence was provided as to suitable ratios for supervision and consultation hours as compared to service hours, the ALJ has estimated,

for purposes of calculating an amount, an approximate amount of 10 percent additionally allocated for supervision, and 10 percent additionally for consultation, for a total of 40 hours of speech and language therapy services. However, the total 40 hours may be allocated as reasonably provided for by contract between the District and the NPA. Due to Student's demonstrated attendance problems, the District will be given longer than one year to provide the services.

LEGAL CONCLUSIONS

1. Student, as the party requesting relief, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)
2. A child with a disability has the right to a FAPE under IDEA 2004. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) FAPE is defined as special education, and related services, that are available to the student at no cost to the parent, that meet the state educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5, § 3001, subd. (o).) The right to special education is extended to pupils between the ages of 19 through 21 years old with preexisting IEPs who have not yet completed their prescribed courses of study, have not met proficiency standards or have not graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subd. (c)(4).)

ASSESSMENTS

3. Before any action is taken with respect to the initial placement of a child with special needs, an assessment of the pupil's educational needs shall be conducted. (Ed. Code, § 56320.) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (e), (f).) Thereafter, special

education students must be reassessed not more frequently than once a year, and shall be reassessed at least once every three years, unless the parent and the local educational agency (LEA) agree otherwise. As part of an annual reassessment, the IEP team is required to review existing assessment data and identify what additional data, if any, is needed to determine continued eligibility, present levels of performance and educational needs, and whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the annual goals and participate in the general curriculum. (Ed. Code § 56381.) A reassessment shall be conducted if the LEA determines "that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment." (20 U.S.C. § 1414(a)(2)(A); Ed. Code, § 56381, subd. (a).) An individualized education program (IEP) meeting to review the assessment must occur within 60 days of the receipt of parental consent for the assessment. (Ed. Code § 56321.)

TRANSITION ASSESSMENTS

4. Beginning not later than the first IEP to be in effect when a child with a disability turns 16, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb); 34 C.F.R. § 300.320(b) (2006); Ed. Code, §56345, subd. (a)(8).) The postsecondary goals must be based upon age-appropriate transition assessments and must be updated annually. (*Ibid.*) In addition to identifying such postsecondary goals, every IEP beginning with age 16 must also include transition services to assist the child in reaching those postsecondary goals. (*Ibid.*)

1. Beginning on September 11, 2006, did the District fail to timely and appropriately assess Student's unique needs regarding postsecondary transition for the 2006-2007 and 2007-2008 school years?

5. As set forth in Factual Findings 5 through 29, and Legal Conclusions 3 and 4, the District failed to assess Student's prevocational training skills by the time he turned 16 years of age on September 11, 2006, but otherwise assessed all other areas related to postsecondary needs and goals, including education, employment and independent living skills. The violation of the legal requirements for assessment was remedied as the District conducted a functional vocational assessment in March 2007 and March 2008. Student obtained an independent assessment in June 2008. The evidence did not establish that Student needs another vocational assessment at this time; rather, he needs vocational education, training and experience. Therefore no further remedy is warranted.

6. As set forth in Factual Findings 32 through 45, and Legal Conclusions 3 and 4, for the rest of the 2006-2007 school year, the District failed to conduct a vocational assessment and hold an IEP meeting until March 16, 2007. By that date, the District's functional vocational assessment and a related situational assessment were completed and presented to the IEP team. Thus, there was a delay of about six months in completing the vocational assessment, most of which was caused by Mother's withholding of consent. The assessment was otherwise completed timely within 60 days of parental consent. The District's net two-month delay in assessing Student violated the law. The violation was immediately remedied in that the District completed the vocational assessment in time for the March 16, 2007 IEP meeting. No further remedy for this violation is warranted.

7. As set forth in Factual Findings 46 through 53, and Legal Conclusions 3 and 4, thereafter, for the second half of the 2007-2008 school year, the District failed to timely complete a vocational assessment within 60 days after parental request and

consent on November 29, 2007, and did not complete the assessment until March 24, 2008, well over 100 days later. No IEP meeting was held as required to review the assessment. The District's failure to timely complete the vocational assessment and hold an IEP meeting violated the legal requirements for assessments. In addition, pursuant to Legal Conclusions 8 through 12, it was a procedural violation of the legal requirements regarding postsecondary transition to annual reassess and update the transition plan, which impeded Parents' rights to participate in the IEP process and impeded Student's right to a FAPE, and constituted a denial of FAPE. He obtained an independent vocational assessment from Ms. Brincko in August 2008. However, Student did not request reimbursement for that assessment or provide evidence of its costs. In addition, he did not establish that he needs another vocational assessment at this time. Instead, Student established that he needs vocational counseling and work experience. Therefore, Student is entitled to compensatory vocational education.

PROCEDURAL VIOLATIONS AND SUBSTANTIVE FAPE

8. There are two parts to the legal analysis of whether a LEA such as a school district offered a pupil a FAPE, whether the LEA has complied with the procedures set forth in the IDEA, and whether the IEP developed through those procedures was substantively appropriate. (*Board of Educ. of the Hendrick Hudson Cent. School Dist. v. Rowley* (1982) 458 U.S. 176, 206-07 [73 L.Ed.2d 690], cited as *Rowley*.) Procedural flaws do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

9. For a school district's IEP to offer a student a substantive FAPE, the proposed program must be specially designed to address the student's unique needs, and be reasonably calculated to provide the student with some educational benefit. (20 U.S.C. § 1401(9).) FAPE must provide a threshold "basic floor of opportunity" in public education that "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." (*Rowley*, 458 U.S. at p. 189.) The *Rowley* court rejected the argument that school districts are required to provide services "sufficient to maximize each child's potential commensurate with the opportunity provided other children." (*Id.* at pp. 198-200.) The court determined that the IEP must be reasonably calculated to provide the student with some educational benefit. The IDEA does not require school districts to provide special education pupils with the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at p. 198.) The Ninth Circuit refers to the "some educational benefit" standard of *Rowley* simply as "educational benefit." (See, e.g., *M.L. v. Fed. Way School Dist.* (2004) 394 F.3d 634.) It has also referred to the educational benefit standard as "meaningful educational benefit." (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2007) 541 F.3d 1202, 1212-1213; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) Other circuits have interpreted the standard to mean more than trivial or "de minimus" benefit, or at least "meaningful" benefit. (See, e.g., *Houston Indep. Sch. Dist. v. Bobby R.* (5th Cir. 2000) 200 F.3d 341; *L.E. v. Ramsey Bd. of Educ.* (3d Cir. 2006) 435 F.3d 384.)

10. An IEP is to be evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams etc. v. State of Oregon, supra*, 195 F.3d at 1149.) The Ninth Circuit has endorsed the "snapshot rule," explaining that "[a]n IEP is a snapshot, not a retrospective." The IEP must be evaluated in terms of

what was objectively reasonable when it was developed. (*Ibid*; *Christopher S. v. Stanislaus County Off. of Ed.* (9th Cir. 2004) 384 F.3d 1205, 1212; *Pitchford v. Salem-Kaiser School Dist. No. 24J* (D.Ore. 2001) 155 F.Supp.2d 1213, 1236.) To determine whether the District offered Student a FAPE, the focus is on the appropriateness of the placement offered by the District, and not on the alternative preferred by the Parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

11. "Transition services" means "a coordinated set of activities for an individual with exceptional needs" that: (1) is designed within a 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 post-school activities, including postsecondary 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 post-school 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).) Where the transition services are to be provided by outside agencies, the outside participating agencies should be identified, and invited to any IEP meeting where their funding or provision of those services is involved.

12. The failure to properly formulate a transition plan may be a procedural violation of the IDEA that warrants relief 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].)

2(A). Did the District have inadequate transition planning and services for Student, and thereby deny him a FAPE for the 2006-2007 and 2007-2008 school years by failing to offer or provide appropriate, measurable postsecondary transition goals that were based on age-appropriate assessments related to training, education, employment, and independent living skills, and which met his unique transition needs?

13. As set forth in Factual Findings 54 through 80, and Legal Conclusions 8 through 12, for the 2006-2007 and 2007-2008 school years, the District failed to offer or provide Student an appropriate postsecondary transition goal in the area of employment. For both years, despite Student’s limited cognitive functioning in the mildly mentally retarded range, limited communication abilities, inability to focus for more than five minutes, need for a one-to-one aide and constant prompting, and behavioral problems, the District’s postsecondary goal was competitive employment in the community. The competitive employment goal was not based on a prevocational assessment for 11th grade and constituted a procedural violation. Following the functional vocational assessment of March 2007, District’s failure to change this goal continued the violation. For the 2006-2007 school year, and the first half of the 2007-

2008 school year, despite the inappropriateness of competitive employment as a long range postsecondary goal, the District's annual vocational goals and services were appropriate because they included Student's participation in the ROP program. The annual vocational goals for ROP classes addressed Student's needs and the violation did not impede his right to a FAPE. The evidence does not support Student's contention that he was denied a FAPE because of this procedural violation for that time period.

14. In contrast, as set forth in Factual Findings 76 through 80, and Legal Conclusions 8 through 12, for the second semester of the 2007-2008 school year in 12th grade, the District's annual vocational goals to attend ROP classes were no longer appropriate. After Student was terminated from the ROP Diversified Occupations class at some point between November 2007 and March 2008, his ITP goals that called for participation in ROP were inappropriate, and no IEP meeting was held to address the problem or plan alternative vocational goals and services. Therefore, the District's failure to have valid postsecondary and annual vocational goals for Student for the second half of the 2007-2008 school year constituted a procedural violation which significantly impeded Mother's ability to participate in the decision making process, and impeded Student's right to a FAPE because the goals no longer supported his transition needs.

15. In addition, as set forth in Factual Findings 72, 73, and 80, the District's annual field trip goals for both school years were vague and not measurable. For the 2006-2007 school year, the violation did not result in a denial of FAPE because the District offered two vocational field trips but Student did not attend. For the 2007-2008 school year, however, the District failed to offer any vocational field trips to Student at a time when he needed to have community vocational experiences. Hence, the field goal denied Student a FAPE.

2(B). Did the District have inadequate transition planning and services for Student, and thereby deny him a FAPE for the 2006-2007 and 2007-2008 school years by failing to offer or provide appropriate transition services,

such as vocational education, remedial reading and math, increased speech and language therapy, and vocational counseling and guidance?

16. *Vocational Education:* As set forth in Factual Findings 83 through 96, and Legal Conclusions 8 through 12, the District offered and provided Student appropriate on-campus vocational education opportunities for 11th grade, including the ROP Diversified Occupations Program, and volunteer work experiences. Mother and Student declined all of them except for the Workability job in the library, and declined to attend vocational field trips in 11th grade. Student received educational benefit from the library assistant position and other tasks on campus that provided him with some work experience and training. Based on the foregoing, Student did not establish that the District's vocational education offered for the 2006-2007 school year denied him a FAPE.

17. For the 2007-2008 school year, the District again offered and provided Student appropriate on-campus vocational education opportunities which resulted in multiple daily vocational education classes. Overall, the District provided appropriate vocational education, except that the District did not offer any vocational field trips at a time when he needed to personally see and experience community occupational opportunities. Consequently, the lack of vocational field trip experiences for 12th grade substantively denied him a FAPE.

18. *Remedial Reading and Math Instruction:* As set forth in Factual Findings 97 through 104, and Legal Conclusions 8 through 12, the District's provision of reading and math instruction for both the 2006-2007 and the 2007-2008 school years was designed to address Student's needs, including his transition needs for basic reading and counting, including remedial instruction to support his transition goals, and was reasonably calculated to provide some educational benefit. Therefore, Student did not establish that he was denied a FAPE related to his postsecondary needs.

19. *Speech and Language Therapy Services:* As set forth in Factual Findings 105 through 122, and Legal Conclusions 8 through 12, the District's provision of speech

and language services for both the 2006-2007 and the 2007-2008 school years did not address Student's unique transition needs for functional communication, because he should have received an additional 30 minutes of direct speech and language services weekly for all of 11th grade and half of 12th grade. Student needed more direct instruction and therapy in order to have repetition and reminders, and the services were thus not reasonably calculated to provide some educational benefit. Therefore Student was denied a FAPE.

20. *Vocational Counseling and Guidance Services:* As set forth in Factual Findings 123 through 127, and Legal Conclusions 8 through 12, after Student was terminated from the ROP program, the evidence established that he needed additional direct vocational support in the form of vocational counseling, job coaching or guidance in order to transition from 12th grade. While the District placed Student in a functional clerical skills class, it failed to provide a vocational counselor or job coach to address his need for direct support in his vocational education. Therefore, Student was denied a FAPE.

2(C). Did the District have inadequate transition planning and related services for Student, and thereby deny him a FAPE for the 2006-2007 and 2007-2008 school years by failing to identify in the IEP transition services plans adequate school staff responsible for the provision of the transition services?

21. As set forth in Factual Findings 128 through 131, and Legal Conclusions 8 through 12, for both school years, the District identified a team of people, including school staff and, where appropriate, participating agencies such as the Regional Center, in the ITP goals and services. They were not identified by name but by job title or classification. The law does not require the IEPs or ITPs to contain the names of specified school staff responsible for implementing its educational programs and services, and the District is entitled to retain flexibility to assign specific staff. Nor does the law require

specificity of each person's job assignments or duties. Accordingly, no denial of FAPE was established.

2(D). Did the District have inadequate transition planning and services for Student, and thereby deny him a FAPE for the 2006-2007 and 2007-2008 school years by failing to identify in the IEP transition services plans the frequency, location, and duration of all transition services?

22. As set forth in Factual Findings 132 through 135, and Legal Conclusions 8 through 12, for both school years, the District's ITP services all had beginning and ending dates. For some services such as field trips, it was not possible to state the frequency or duration. Moreover, Student's own expert witness Dr. Johnson agreed that, due to the nature of the transition services, the standards were not the same as those for annual goals, and the frequency and duration of services was often difficult to predict. Accordingly no denial of FAPE was established.

COMPENSATORY EDUCATION

23. When an LEA fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*School Committee of Burlington v. Department of Educ.* (1996) 471 U.S. 359, 369-371; 20 U.S.C. § 1415(i)(2)(C)(3).) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief that may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. (*Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The purpose of compensatory education is to "ensure that the student is appropriately educated within the meaning of IDEA." (*Ibid.*) Reimbursement may be denied based on a finding that the actions of parents were unreasonable. (See 20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(3).) For example, in *Patricia P. ex rel Jacob P. v. Board of Education* (7th Cir. 2000) 203 F.3d 462, 469, parents who did not allow a

school district a reasonable opportunity to evaluate a child following a parental unilateral placement forfeited their claim for reimbursement.

24. Based on the denials of FAPE as determined in Legal Conclusions 7, 14, 15, 17, and 20, Student is entitled to compensatory education due to the District's failure to provide any vocational field trips for the entire 2007-2008 school year, and failures to provide appropriate postsecondary and annual vocational goals, timely vocational assessment, and vocational counseling for the second half of the 2007-2008 school year. Given his limited functioning, concrete thinking and lack of exposure to myriad vocational possibilities, at a time when his transition development to postsecondary life was critical, the Student is entitled to compensatory education in the form of vocation counseling services.

25. In determining the length of time over which compensatory vocational counseling should be provided as an equitable remedy for the District's violations, it is noted that District's denials of FAPE occurred primarily during the second semester of Student's 12th grade year of high school. Although violations of law occurred in the prior year, they were corrected or did not result in a denial of FAPE. However, it would not be sufficient to collectively award only six months worth of specified compensatory education because the violations not only impeded Student's progress during his 12th grade year of high school, but also consequently diminished his current progress as well due to his slow rate of learning. Therefore, as calculated in Factual Finding 146, the District shall provide one year of compensatory vocational education in the form of 160 hours of vocational counseling, training, and guidance services through an NPA, including supervision and consultation. While the award is intended to be provided over a period of one year, due to Student's attendance difficulties, the District shall have additional time within which to provide the services.

26. Based on the denials of FAPE as determined in Legal Conclusion 19, Student is entitled to compensatory education due to the District's failure offer or provide sufficient speech and language services to Student for both school years, which substantively denied him a FAPE. As set forth in Factual Findings 122 and 147, for both the 2006-2007 and 2007-2008 school years, Student should have received two 30-minute sessions of direct speech therapy per week. Accordingly, Student is entitled to 33 hours of compensatory direct speech and language services, plus additional hours for supervision and consultation, for a total of 40 hours of compensatory speech and language services. Due to Student's resistance to Ms. Bickel's services, the compensatory speech and language services should be provided by an independent NPA. While the award is intended to be provided over a period of one year, due to Student's attendance difficulties, the District shall have additional time within which to provide the services.

ORDER

1. As compensatory education for all of the violations found herein related to Student's postsecondary vocational goals and transition services, the District shall provide 160 hours of vocational counseling, job coaching, training, and guidance through a qualified vocational NPA provider prior to December 31, 2010. This shall include direct services to Student during school and during any job or training site where Student is placed or employed pursuant to his IEP, and may include services in the community. The services shall include but not be limited to direct vocational counseling, job coaching, training, education, guidance and vocational field trips, and may include not more than 20 percent of the total hours allocated for indirect services, such as consultation and supervision. The direct vocational services must include individual one-to-one services and may include small group services in the discretion of the service provider, unless the parties otherwise agree. The time of delivery of the

services shall be coordinated between Student, Parents, the NPA provider, and the District.

2. To implement this order for compensatory vocational education and training, Student and the District may nominate one or more special education vocational NPA providers within 30 days of the date of this decision. The District shall consider Student's proposed provider(s), and shall select and contract with a qualified vocational NPA provider within 45 days of this decision.

3. As compensatory education for the District's violations found herein related to speech and language therapy, the District shall provide compensatory speech and language therapy services in the form of 40 hours of speech and language therapy services, including direct individual and small group services, prior to December 31, 2010. Not more than 20 percent of the total hours may be allocated for indirect services, such as consultation and supervision. The ratio of direct individual services to direct small group services shall be determined in the discretion of the speech and language provider, unless the parties otherwise agree. The time of delivery of the services shall be coordinated between Student, Parents, the NPA provider, and the District.

4. To implement this order for compensatory speech and language therapy services, Student and the District may nominate one or more speech and language NPA providers within 30 days of the date of this decision. The District shall consider Student's proposed provider(s), and shall select and contract with a qualified speech and language NPA within 30 days of this decision.

5. All of Student's other requests for relief are denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student partially prevailed on Issues 1, 2(A), and 2(B) for hearing in this case. District

partially prevailed Issues 1, 2(A) and 2(B), and prevailed on Issues 2(C) and 2(D) for hearing.

NOTICE OF APPEAL RIGHTS

The parties are advised that they have the right to appeal this decision to a state court of competent jurisdiction. Appeals must be made within 90 days of receipt of this decision. A party may also bring a civil action in United States District Court. (Ed. Code, § 56505 subd. (k).)

DATED: April 13, 2009

_____/s/_____

DEIDRE L. JOHNSON

Administrative Law Judge

Office of Administrative Hearings