

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLOVIS UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010010583

DECISION

Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH), State of California, heard this matter in Clovis, California, on May 10 through 13, and 17 through 21, 2010.

Student was represented by Barbara Ransom and Arthur Lipscomb, Attorneys at Law. Student's mother (Mother) was present on all hearing days. Student did not attend the hearing.¹

Clovis Unified School District (District) was represented by Damara Moore, Attorney at Law. Joanne Fiedler, District Special Education Program Specialist, and Mary Bass, District Director of Special Education, attended portions of all hearing days.

The District filed its due process request (complaint) on January 13, 2010, OAH Case No. 2010010583. Student filed her complaint, OAH Case No. 2010020142, on November 4, 2009. On February 23, 2010, Student filed an amended complaint. On February 23, 2010, OAH issued an order that consolidated the District's and Student's complaints and designated Student's case as the primary matter. On April 5, 2010, the

¹ Student transferred her educational rights to her Mother after her 18th birthday.

parties requested and received a continuance of the hearing dates. At the commencement of the hearing, the parties informed the ALJ that they had settled Student's case, Student withdrew her complaint, and the matter proceeded only as to the District's complaint. At the close of the hearing, the matter was continued to June 11, 2010, for submission of closing briefs. On June 10, 2010, OAH granted Student's request for an extension of time to submit closing briefs to June 16, 2010.² Both District and Student submitted closing briefs on June 16, 2010, and the matter was submitted for decision.³

ISSUES⁴

- 1) May the District deny Student an independent educational evaluation (IEE) in speech and language because its assessment, presented on November 9, 2009, was conducted in compliance with the law?

² The same date, Student submitted additional documents regarding Student's classwork, as permitted by the ALJ on May 21, 2010. These documents have been marked as Exhibit S-162 and admitted into evidence.

³ To maintain a clear record, the closing briefs have been marked as exhibits. Student's brief has been marked as Exhibit S-163, and District's brief has been marked as Exhibit D-75.

⁴ These issues are those framed in the May 5, 2010 Order Following Prehearing Conference and as further clarified at hearing. The ALJ has reorganized the issues for this decision. Due to the resolution of Student's claims in OAH Case No. 2010020142, through the 2009-2010 school year, the parties stipulated at the commencement of the hearing that the issues for hearing regarding the District's complaint were limited to the 2010 extended school year and 2010-2011 school year.

- 2) May the District deny Student an IEE in reading abilities because its assessments, presented on November 9, 2009, were conducted in compliance with the law?
- 3) Was the individualized education program (IEP) of November 9 and 16, 2009, for the 2010 extended school year (ESY) and 2010-2011 school year (SY) reasonably calculated to provide Student with meaningful educational progress?

PROPOSED REMEDY

As a proposed remedy, the District requests an order that its November 5, 2009 speech and language and reading assessments were properly conducted and that the District does not have to provide Student with an IEE at public expense. The District also requests an order that its IEP of November 9 and 16, 2009, was reasonably calculated to provide Student with meaningful educational progress in the least restrictive environment (LRE).

CONTENTIONS OF PARTIES

The District asserts that its November 2009 speech and language and reading assessments were properly conducted, assessed Student in all areas related to her suspected disability and accurately reflected her strengths and weaknesses. District claims the speech and language assessment demonstrated that Student's ability is commensurate with her cognitive ability and that she would not benefit from additional direct speech and language services because she does not generalize what she learns in individual therapy sessions, and instead requires work on speech and language skills in class and the community. Regarding the reading assessments, the District argues that the assessments established that its reading program had been effective for Student

based on her progress and that she does not require the intensive reading program that Student requested during the IEP process.

Additionally, the District contends that its proposed placement for Student for 2010 ESY and SY 2010-2011 was reasonably calculated to provide Student with meaningful educational progress in the LRE. For the 2010 ESY, the District asserts that the continuation of Student's functional life skills (FLS) class meets her unique needs by teaching her basic social, functional and job skills she needs to become independent. For SY 2010-2011, the District's LINKS program provides Student with skills she needs to obtain a job and live independently, and that its program permits Student to interact with her typically developing peers and members of the public.

Student asserts that the District's speech and language assessment failed to adequately address her unique needs because it recommended ceasing direct services. Regarding the reading assessments, Student contends that the District failed to consider her visual impairment during the assessments, which led to lower scores and underestimated her ability to learn with intensive services. Student argues that the District's offer for the 2010 ESY and SY 2010-2011 places her in segregated programs that do little to prepare her to get a job and live independently. Further, Student asserts that the District's offer failed to provide adequate assistance to address her speech and language and reading deficits, and that she would benefit from a fifth year of high school in an integrated program with typically developing peers.

FACTUAL FINDINGS

JURISDICTION AND FACTUAL BACKGROUND

1. Student is 18 years old, resides with her Mother within the District's geographical boundaries and just finished her senior year at Clovis High School (CHS). Student is eligible for special education services under the category of mild-to-

moderate mental retardation, and has cerebral palsy. During her attendance at CHS, Student has attended a FLS special day class, and one to two general educational classes each semester.

2. Before attending CHS in SY 2006-2007, Student challenged the District's proposed placement in a FLS class and the matter was litigated at a due process hearing before OAH. Student requested placement in a resource specialist vocational skills program. The FLS class contained approximately 10 developmentally disabled students. The classes focused on teaching students basic math and reading skills, along with problem-solving, self-help, personal awareness, and other related skills that the students need to go through daily life (including food preparation, survival, kitchen-community-school safety, emergency procedures, etc.). The District prevailed at hearing as the decision found that the FLS class adequately addressed Student's unique needs and was appropriate based on her cognitive functioning ability. (*Student v. Clovis Unified Sch. Dist.* (October 17, 2006) Cal.Ofc.Admin.Hrngs. Case No. N2006070834.)

STUDENT'S IEE REQUESTS

Speech and Language Assessment

3. Assessments upon which a special education determination is based must comply with numerous legal requirements.⁵ They must, for example, be conducted in all areas related to any suspected disability the student may have. They must occur at least every three years, or more frequently if circumstances require it, or if a parent or teacher requests it. They must not be based on a single procedure or criterion; must be used for purposes for which they are valid and reliable; must be properly administered by trained

⁵ Federal statutes and regulations generally use the term "evaluation." California statutes and regulations generally use the term "assessment." This decision conforms to California usage.

personnel; must accurately reflect the pupil's aptitude, achievement level and other relevant factors; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is not feasible. A parent has the right to obtain an IEE if the parent disagrees with a district's assessment. When a parent makes a request for an IEE, a district must either fund the IEE at public expense or file for a due process hearing to show that its assessments were appropriate.

4. Amanda Fitts conducted the District's speech and language assessment for about four hours over four days in September and October 2009. Ms. Fitts presented her assessment findings and recommendations at the November 9 and 16, 2009 IEP meetings. At the IEP meetings, Mother did not challenge any of Ms. Fitts' assessment results, nor make a request for an IEE. On February 9, 2010, Mother requested a speech and language IEE because she believed that the District's assessment did not accurately reflect Student's unique needs.

5. Ms. Fitts is a speech and language pathologist employed by the District since 2006. Ms. Fitts was qualified to conduct the speech and language assessment. She has bachelor of arts and a master of arts degrees in communicative sciences and disorders with an emphasis in speech language pathology. Ms. Fitts possesses a California credential to provide speech and language services, and a certificate of clinical competency from the American Speech-Language Hearing Association and is a licensed speech and language pathologist. Ms. Fitts has administered over 200 speech and language assessments, and assessed approximately 25 pupils with mental retardation. Ms. Fitts has provided Student with speech and language services for three years.

6. At hearing, Student conceded that Ms. Fitts was qualified to assess Student and assessed Student in all areas of speech and language related to her suspected disability. Student did not challenge the accuracy of Ms. Fitts' assessment

results because Student's own private speech and language assessor, Ericka Olsen, came to nearly the same findings. Ms. Olsen administered nearly the same test instruments in February 2010 and arrived at substantially the same results regarding Student's areas of need as to her expressive, receptive and pragmatic language. The appropriateness of the test instruments used by the District is therefore also not in dispute.

7. Student continued to request an IEE at hearing because she disputed Ms. Fitts' recommendation that the District should discontinue providing direct speech and language services because Student no longer benefitted from direct services because of her inability to generalize what she learned in the speech and language sessions to real-life situations. Student also challenged the annual goals Ms. Fitts developed and her contention that District staff could implement the goals and provide Student with sufficient speech and language services. The latter two contentions are not relevant to analyze whether the assessment was appropriate and are addressed in evaluating the annual speech and language goals. (Factual Findings 51-54 and 68-72.)

8. There is no dispute that Ms. Fitts was a qualified assessor, properly conducted the speech and language assessment with appropriate test instruments in conformance with the law and that her assessment results were accurate. The fact that Student and Parent disagreed with Ms. Fitts' conclusions, recommendations, or proposed goals does not implicate the appropriateness of her assessment. Therefore, Student is not entitled to an IEE at public expense because the District's November 2009 speech and language assessment was conducted by a qualified assessor in all areas related to Student's suspected disability and the results were accurate.

Reading Assessment

9. The District's November 2009 reading assessment of Student included assessing her progress in the Science Research Associates (SRA) reading program used in her FLS class as tracked by Janice Oakes, Student's FLS teacher during her junior and

senior years. Ms. Oakes also administered the Qualitative Reading Inventory (QRI). Rose Caley, a District resource specialist, administered the Woodcock-Johnson Test of Achievement, Third Edition (WJTA-III). The District asserted that the reading assessments were properly conducted by qualified assessors and accurately reflected Student's reading ability. Student contended that the District's assessments failed to take into consideration her visual impairment, which led to scores that underestimated her reading ability.

10. Ms. Oakes has a master of arts in special education, a bachelor's degree in communication disorders and a learning handicapped teaching credential. Based on her education and experience, Ms. Oakes was qualified to measure Student's progress on the SRA in the FLS class, which established that, as of November 2009, Student was reading at the 2.2 grade level. Ms. Oakes was also qualified to administer the QRI, which measures a student's reading ability in the areas of word identification, oral reading and reading comprehension, and can be used for elementary through high school students. On the QRI, Student's instructional reading ability was no greater than the third grade level.⁶

11. Ms. Caley has a teaching credential in English along with a learning handicapped, resource specialist credential. Ms. Caley has taught in the area of special education for 14 years, and was a general education teacher for 14 years previously. Based on Ms. Caley's education and experience, she is qualified to administer the WJTA-III, and has administered the WJTA-III, and its prior editions, hundreds of times. Ms.

⁶ A student is at the instruction reading level when the student can perform the reading assignment with moderate assistance, and reading mastery when the student needs little or no assistance.

Caley has also been Student's case manager for the past three years, observed Student in class and previously administered the WJTA-III to her in December 2006.

12. The WJTA-III was normed on approximately 8,000 individuals, including persons with developmental disabilities, and is widely accepted for measuring the reading level of persons like Student. The broad reading score on the WJTA-III is a cluster score that includes a person's scores on the reading fluency, letter-word identification, and passage comprehension subtests. The test scores are based on the age of the individual compared with others of the same age or grade in school.

13. On the letter-word identification subtest, Student had a grade equivalence of 3.6. On the reading fluency subtest, Student had a grade equivalence of 2.2. Finally, on the passage comprehension subtest, Student had a grade equivalence of 1.9. Student's broad reading standard score was a 2.7 grade level equivalency.

DISTRICT'S AND PRIVATE PSYCHOEDUCATIONAL ASSESSMENTS

14. District school psychologist Keith Williams conducted a psychoeducational assessment of Student in September 2009. Mr. Williams administered several test instruments to measure Student's cognitive ability, academic abilities and adaptive behavior. Mr. Williams administered the Wechsler Adult Intelligence Scale, Third Edition (WAIS-III). On the WAIS-III, Student had a full-scale IQ score of 59, with significant deficits regarding her working memory and perceptual organization. Student's strength was her verbal comprehension. Mr. Williams also administered the Adaptive Behavior Assessment System, Second Edition (ABAS-II), by having Parent and Ms. Oakes complete the survey forms. Both Parent and Ms. Oakes noted on the ABAS-II survey forms that Student had significant deficits in all areas, such as home and school living, self-care, communication, and community use. Mr. Williams' finding as to Student's cognitive impairment and adaptive behaviors is consistent with his 2006 psychoeducational

assessment and the 2005 assessment conducted by the Diagnostic Center of Central California (DCCC).⁷

15. Student's expert, Paul Lebby, Ph.D., conducted a neuropsychological assessment over four-and-a-half hours on May 13, 2010. Dr. Lebby is a neuropsychologist and obtained his Ph.D. degree in clinical neuropsychology from the University of California, Berkeley, in 1994, and was a Postdoctoral Fellow at the University of California, San Francisco Medical Center, from 1994 to 1995. He is licensed by the state of California as a clinical psychologist, is on the faculties of the University of California, San Francisco School of Medicine, and Alliant International University, is on the staff of Children's Hospital of Central California, and has a private practice. Dr. Lebby did not prepare a written report as Student's counsel did not request one.

16. Dr. Lebby previously assessed Student in 2001, and consulted with Mother in 2007 in interpreting various test scores from him, the District, and the DCCC. While Dr. Lebby found Student's cognitive ability to be slightly higher than the District's psychoeducational assessment, based on the different tests that he administered, the difference was not significant as Dr. Lebby agreed that Student had significant cognitive impairments similar to Mr. Williams' findings.

STUDENT'S VISUAL IMPAIRMENT

17. Student asserted that the District's assessments underestimated her ability because the District did not accommodate her visual impairment during the testing, as

⁷ The DCCC is operated by the California Department of Education and provides assessment and educational planning services to assist school districts in determining the needs of special education students, and technical assistance and consultative services.

shown in testing conducted by the DCCC in 2005, the Cullinan Education Center (CEC) in 2008, 2009 and 2010, and Paul Lebby, Ph.D., in 2001 and 2010.

18. The DCCC assessment noted that Student had difficulty seeing things off to the right of her visual field, and would sometimes appear to ignore items on the far right of the paper when working on a task. The DCCC assessment recommended further testing to examine the cause of Student's visual impairment. No assessment, by either the District or Mother, was done to examine the possible impact Student's right eye impairment had on her ability to read. Student eventually obtained glasses, which did not address Student's right eye impairment. Additionally, according to Mother, and confirmed by observations by Ms. Oakes and Ms. Caley, Student could read equally well with or without her glasses.

20. As to the District's awareness of Student's reading difficulties related to her visual impairment, Ms. Oakes observed Student having difficulty reading after becoming her teacher because Student would skip words on a line or lines on a page. Ms. Oakes had Student use a bookmark to keep track of the line she was reading and use her finger to track words on a line, including the SRA reading. These simple accommodations worked as Student could accurately read books and work pages using them. Because the SRA score reflected Student's progress in reading the SRA materials, in which Ms. Oakes provided the needed accommodations, the SRA scores accurately reflected Student's ability in 2009.

READING ASSESSMENT BY CEC

21. Despite the District's knowledge of Student's visual impairment, the evidence established that the District did not consider this information when conducting the QRI and WJTA-III in 2009. While Student did not wear her glasses for the WJTA-III, the evidence established that she read equally well with or without wearing her glasses. Student attempted to demonstrate that the District's failure to take into consideration

her visual impairment during the reading assessments led the District to underestimate her reading abilities and that CEC's assessment information shows Student's true reading ability.

22. CEC is a private agency that provides children and adults with one-to-one reading instruction. Several school districts contract with CEC to provide reading instruction for children pursuant to the No Child Left Behind Act (NCLB). However, because CEC is a for-profit entity, it cannot contract with school districts to provide special education services. The District does not contract with CEC.

23. Mother enrolled Student at CEC in August 2008, and Student received three one-hour sessions a week through the end of 2009, when the tutoring decreased to twice a week. CEC modified Student's reading instruction when the instructor, Amy Haener, noticed problems Student had in visual tracking while reading. Ms. Haener discussed her observations with her supervisor, and was directed to modify some of Student's work by enlarging the print font and using graph paper. With these simple accommodations, Student's reading performance improved in decoding words.

24. CEC's focus in its reading instruction with Student was to improve her decoding skills so she could better recognize and sound out words. CEC used primarily the Orton-Gillingham reading program, which is a multi-sensory method of teaching reading. Student's ability to decode improved as she successfully completed the lessons with the above-noted accommodations and additional assistance from Ms. Haener.

25. CEC conducted a reading assessment before starting instruction and then conducted regular reading assessments to track Student's progress. Student attempted to use these CEC reading assessments to demonstrate the level of progress she made. However, CEC failed to properly administer the Silvaroli Classroom Reading Inventory because CEC only used the Part A test, and not also the Part B test to avoid a practice

effect that could inflate Student's score.⁸ Additionally, CEC's measurement of Student's reading level was a combination of different tests that measured Student's reading decoding, fluency and comprehension, which was not scientifically based to demonstrate that the compilation score accurately reflected Student's reading ability. The validity of the individual decoding, fluency and comprehension scores was problematic as CEC used differing standards as to what percentage Student had to correctly achieve to obtain a particular grade level proficiency. However, based on the test scores CEC had as of the November 5, 2009 IEP meeting, Joanne Cullinan, CEC's operator, did not state at the IEP meeting that she disagreed with the District's reading assessment findings. Based on the foregoing, the evidence did not establish that CEC's assessments more accurately reflected Student's reading abilities than the District's reading assessments.

DR. LEBBY'S ASSESSMENT

26. Dr. Lebbly quickly observed Student's right eye visual impairment during his May 2010 assessment.⁹ Because of the visual impairment, Student could not focus on reading materials with her right eye and she used her left eye to focus her vision. If

⁸ The "practice effect" is the unrepresentative elevation of scores that sometimes occurs when the same test is administered by two assessors close together in time, and the test subject does better on the second test by virtue of having recently taken it before.

⁹ Dr. Lebbly's 2007 consultation report made numerous recommendations regarding Student's education program. However, notably missing from Dr. Lebbly's 2007 report, which the District had in November 2009, was any mention of Student's visual impairment, or possible accommodations Student required.

Student tried to focus with both eyes, Student would experience double vision because her eyes were not tracking in concert. Therefore, while reading, Student had difficulty focusing on one word at a time and staying on a line.

27. Dr. Lebby recommended minor accommodations, such as removing distracting information on the page for Student to focus more on what she was reading, larger print font, spacing out the lines she read, and using lined paper. During the 2010 assessment, Dr. Lebby administered test instruments with no accommodations to get a baseline, and then removed distracting information from the test material. Dr. Lebby did not use any further accommodations as those would invalidate the test results. With the simple accommodation, Dr. Lebby noted improvement in Student's overall reading test scores of one grade level, which still only placed her in the mid-second grade level. While additional accommodations might improve her reading scores somewhat, Dr. Lebby did not opine how great the increase could be.

28. Dr. Lebby recommended that a reading specialist knowledgeable about visual impairments and accommodations should assess Student and make recommendations for different accommodations and strategies to assist Student's functional reading skills, such as reading a bus schedule or job instructions.

29. The evidence showed that Student's visual impairment did not affect her main reading disability, which is comprehension. Even with the accommodations employed by CEC, Student's reading comprehension did not increase significantly. Student's reading comprehension did not increase because her comprehension deficit was related to her working memory, which was extremely low on the intelligence assessment administered by Mr. Williams, and confirmed in Dr. Lebby's assessment. Therefore, any gains Student might make in being able to read with less difficulty would do little to improve her reading comprehension because of her significant working memory deficits.

30. While the District should have more fully taken into consideration Student's right eye visual impairment, the findings of its reading assessments are not markedly different than Dr. Lebby's opinion of Student's reading ability, which did consider Student's visual impairment. Additionally, Ms. Cullinan did not point out any concerns about the District's reading assessment in November 2009.

31. However, Student during her FLS class, CEC tutoring and Dr. Lebby's assessment, demonstrated difficulty reading when there was extraneous material, different formatting and words close together on the page. While the District can compensate for these difficulties in its own reading materials, Student needs the ability to read different material, such as bus schedules and employment information, which might not be modified. Dr. Lebby was therefore persuasive that further testing by a reading specialist, taking into account Student's visual disability, could lead to the development of additional accommodations and strategies to improve Student's reading, which she will need for employment and independent living. Therefore, the District's reading assessments properly determined Student's reading abilities at the second grade level. However, Student does require further assessment regarding her visual impairment to develop further accommodations and strategies that can assist her to read more independently in the community to help her live independently.

DISTRICT'S NOVEMBER 2009 OFFER

32. A school district provides a FAPE to a student if its program or placement is designed to address the student's unique educational needs and is reasonably calculated to provide meaningful educational benefit in the LRE. In California, a student is eligible for ESY only if his IEP team finds that interruption of the student's educational programming may cause regression. The team must also find that the likely regression, when coupled with the student's limited recoupment capacity, would render it impossible or unlikely that, without a summer program, the student would attain the

level of self-sufficiency and independence that would otherwise be expected in view of his or her disability.

33. In the November 2009 IEP for the 2010 ESY, the District considered the assessment information known to it at the time, and offered Student a FLS class for five weeks, which was substantially similar to the class she previously attended.¹⁰ For SY 2010-2011, the District offered Student its LINKS program. The District also offered reading, writing, math, speech and language, independent living, and social-emotional goals. The District proposed ceasing direct speech and language therapy. The District offered Student individual counseling for 30 minutes a month. Parent rejected the District's offer for 2010 ESY and SY 2010-2011 because she contended that LINKS was not a placement in the LRE, and she wanted Student to attend a fifth year at CHS, with an academic, not a functional life, program with additional opportunities to interact with typically developing peers. In the alternative, Student asserted that the District's FLS and LINKS programs would not provide her with sufficient job and independent skills training. The sufficiency of the placement regarding job and independent living skills training is evaluated separately.

Least Restrictive Environment

34. A special education student must be educated with non-disabled peers to the maximum extent appropriate, and may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general education classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. The Individuals with Disabilities in Education Act (IDEA) requires that a student with a disability be placed in the LRE in which the student can be

¹⁰ For the past two ESYs, the District offered the FLS class, which Student had not attended as she attended a District workability program instead.

educated satisfactorily. The environment is least restrictive when it maximizes a student's opportunity to mix with typical peers while still obtaining educational benefit. Whether a student is placed in the LRE requires the consideration of four factors: (1) the educational benefits of placement full-time in a less restrictive setting; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the less restrictive class, and (4) the costs of the less restrictive setting.¹¹ The District contends that FLS and LINKS are the LRE based on Student's needs for a functional skills program that prepares her to obtain employment and live independently. Student asserts that the District's placement offer is not in the LRE, because based on her unique needs she required an academic program for the 2010 ESY and SY 2010-2011 with typically developing peers.

EDUCATIONAL NEEDS, VOCATIONAL VERSUS ACADEMIC PROGRAM

35. Student asserted in the prior due process hearing and throughout high school that she required an academic educational program and not a program focused on teaching her functional academic and life skills. During the prior and current hearings, both parties relied on the 2005 DCCC assessment to describe Student's unique needs. The 2005 DCCC report recommended that Student's educational program be designed to teach her functional life skills and functional academics based on her cognitive impairment and deficits as to her independent life and vocational skills. The October 2006 decision by OAH upheld the District's offer of FLS, and relied in great part

¹¹ Neither the District nor Student makes any argument concerning the cost of Student's placement, so that subject is not addressed here.

on the DCCC report.¹² Since the October 2006 decision, Student's profile has changed little because of her cognitive impairment. The evidence did not establish any marked change in circumstances that would warrant changing Student's educational program from a functional academics and life skills program to a primarily academic program.

36. Student's own expert, Dr. Lebby, recommended that she receive the functional and vocational education recommended in the DCCC report. Additionally, Student received from the Regional Center services from an independent living skills (ILS) program. At the time of the November 2009 IEP meeting, the ILS program was working with Student on being able to properly wash her hair, face and hands and do simple household chores, like making up a bed and removing clothes from the washer and dryer, all skills that most persons have mastered years earlier. Therefore, because of Student's cognitive impairment and significant deficits as to her functional and independent living skills, the District demonstrated that Student required a functional academic and life skills program to teach her independent living and job skills, and not an additional year of high school.

NON-ACADEMIC BENEFITS

37. During high school, Student objected to her attendance in the FLS class because she believed that it segregated her from typically developing peers into a program with other cognitively impaired students, and that LINKS will only continue this segregation. District asserted that at LINKS, Student would have opportunities to interact with typically developing peers and, while in the community, Student will interact with members of the community. Additionally, Student will have the opportunity to interact with typically developing peers during the 2010 ESY.

¹² Prior administrative decisions have persuasive value in later cases, although they are not binding precedent. (Cal. Code Regs., tit. 5, § 3085.)

38. The LINKS program is designed for students, ages 18 through 22, primarily who have cognitive impairments, like Student, and focuses on functional academics, recreation and leisure, community participation, domestic and self-help, social and behavioral, communication and mobility skills. LINKS is located on the District's adult school campus, and contains four classes, each running the same vocational and functional skills program, with each class having 12 students, a teacher and two aides. Students at LINKS are taught vocational and independent living skills in class and community outings, along with functional academics, and go into the community for job training, employment, grocery shopping, laundromat, and recreational activities. In the afternoon, students take elective classes, such as drama, Special Olympics preparation or art classes.

39. Student is not confined to the LINKS classroom, and may go to the adult campus' common areas and activity center and interact with typically developing peers. However, Student's November 2009 IEP did not contain any explicit mainstreaming opportunities for Student to interact with typically developing peers as the focus of LINKS was for Student to interact with the general public during community outings and employment situations.

40. Student did not dispute her need to interact with the general public and co-workers and to learn skills related to these interactions, such as how to carry on a conversation or whom to ask a question in a grocery store. However, Student asserted that the District should not isolate her so that her only ability to make friends is with other cognitively impaired students.

41. However, the District demonstrated that, when given the opportunity at CHS, Student preferred to interact with her FLS classmates and not with typically developing peers. Student participated in a general education choir class and was a member of the CHS track and field and cross-country teams. During her senior year,

Student was in a general education physical education class, and during all four years at CHS student was on the general education campus during lunch like any other CHS student. In each of these mainstream opportunities, Student was with typically developing peers, and Ms. Fitts encouraged Student to interact with typically developing classmates if she encountered Student during lunch on campus. However, Student preferred to interact with her classmates in the FLS program. For example, during physical education when FLS students were in the gym in their adaptive physical education class and Student was with her regular education class, Student would talk and stay around the FLS students. Her physical education teacher had to tell Student to join her class, even after her teacher told her previously that she should remain with her regular education class and not the FLS students.

42. Further, as Student is preparing to enter the workforce and live independently, her interactions with non-disabled individuals should be focused functionally on persons she will encounter, such as while shopping, recreational activities, and employment. The District established Student's need to successfully interact with the general public through LINKS' daily outings at job sites, resource agencies, recreational outings, the grocery store, and laundromat. Student did not adequately explain why she needed to interact more with CHS students through a fifth year of high school, and not with the general public with whom she will need to interact after she turns 22 and receives no further services from the District. Indeed, District is obligated by law to provide Student with postsecondary transition training, community participation, and vocational education. Therefore, the District's proposed placement at FLS and then LINKS provides Student with more meaningful non-academic benefit than she would receive in a fifth year at CHS.

EFFECT OF STUDENT IN REGULAR EDUCATION

43. In her general education classes at CHS, Student has not been a disruptive influence. Student has had an aide attend the general education classes with her, who assisted Student with staying on task. Student's educational record did not indicate that the general education teachers complained about Student's presence in their classes.

44. A balancing of the factors established that the LRE for Student is a vocational, functional life skills program and not a fifth year of high school. Student required a functional academic program that prepares her for living independently and gaining employment. Both parties agree that Student does not have the skills presently to live independently and to be employed. A fifth year at CHS in an academic program will not teach Student those needed skills. Additionally, Student's interaction with non-disabled individuals needs to be geared towards those in the general public and not high school students. Therefore, the FLS class and LINKS are placements in the LRE for Student.

Need for Direct Speech and Language Services

45. At the November 2009 IEP meetings, Ms. Fitts recommended ending Student's direct speech and language therapy sessions in either an individual or group setting, and recommended that District personnel work on Student's speech and language needs in the classroom and community. The District asserted that Student no longer required direct speech and language services as her skills were commensurate with cognitive ability, and that she no longer benefitted from the service. Mother did not consent to the District's proposed elimination of direct speech and language therapy.

46. At the time of the November 2009 IEP meetings, Ms. Fitts provided Student with direct speech and language therapy, 30 minutes a week, in individual sessions. Ms. Fitts also visited the FLS class for about an hour a week to observe and provide direct assistance to students, and consult with the teacher. During the therapy

sessions, Student could correctly tell Ms. Fitts how she would respond to social situations, such as what she would do if she got into an argument with a friend, but could not generalize this skill into real-life situations. Student's scores in the 2009 speech and language assessment showed that Student had made slow but steady progress regarding her expressive, receptive and pragmatic language as compared to her scores in the 2007 assessment. Finally, Student's speech and language skills were commensurate with her cognitive ability, based on the test results from Mr. Williams' 2009 and Dr. Lebby's 2010 assessments. Additionally, while Dr. Lebby addressed Student's speech and language abilities during his testimony, Dr. Lebby did not state that Student's speech and language skills were below her cognitive ability.

47. Student's speech and language expert, Ms. Olson, possesses educational expertise similar to that of District's assessor, Ms. Fitts, as Ms. Olson graduated from the same undergraduate and graduate program as Ms. Fitts in 2005 and 2007 respectively. Ms. Olsen also has a certificate of clinical competency and is a licensed speech and language pathologist. However, Ms. Olsen's work experience after graduating has been in a clinical setting, not at a school, and she has not drafted IEP goals or performed educational speech and language assessments.

48. Ms. Olsen noted that Student could repeat back, on a different day, rote phrases for social interaction scenarios that Ms. Olsen taught her. Ms. Olsen's clinical observation corroborated Ms. Fitts' observations, over three years, that Student could remember rote phrases in a clinical setting, but not in real-world situations. Ms. Olsen did not observe Student at school or in the general public to confirm that Student could generalize in a real-world setting what was taught in a clinical setting.

49. Ms. Olsen recommended that Student continue to receive individual speech and language services based on her four-hour assessment of Student over two days. As found above, Ms. Olson's recommendation was based on substantially similar

assessment tests and results as those found by the District. However, Ms. Olsen's recommendation did not have the same weight as Ms. Fitts' based on her lack of experience in an educational setting. Additionally, Ms. Olsen based her recommendations on maximizing Student's potential, not providing Student with meaningful educational progress. Finally, even Dr. Lebby opined that Student learns better in real-life situations than in a clinical setting.

50. Ms. Fitts' recommendation that Student no longer needed to receive direct speech and language therapy did not mean that the District would not address Student's speech and language needs in its FLS and LINKS programs. The evidence established that the District would address Student's speech and language needs through staff at the ESY and at the LINKS program in real-life situations with Student interacting with her classmates, typically developing peers and the general public. Therefore, the District properly determined to terminate direct speech and language therapy sessions, and the offer of indirect speech and language assistance and consultation did not deny Student a FAPE.

Speech and Language Services

51. Even though Student no longer required direct speech and language services, Student still has significant expressive, receptive and pragmatic language deficits that the District is required to address in the FLS class during the 2010 ESY and in the LINKS program during SY 2010-2011. For 2010 ESY, the FLS class is similar to the regular 2009-2010 school year class in which Student was taught functional academic and independent living and job readiness skills, which included working on speech and language skills and goals, and observation by a speech and language therapist.

52. LINKS' staff work with students on speech and language skills in class and the community, on such items as job interviews, asking for assistance while shopping, talking to customers and co-workers, and interacting with friends.

53. While Student does not require direct speech and language therapy sessions, she still requires extensive help to address her speech and language deficits. Ms. Fitts is the District speech and language therapist assigned to LINKS for FLS students from CHS, which include Student for SY 2010-2011. At CHS, Ms. Fitts' job duties also include observing students in the classroom and on campus and consulting with CHS teachers. However, the District has no such requirements for Ms. Fitts to observe students and consult with staff at LINKS. While staff at LINKS could contact Ms. Fitts to answer questions, Student's speech and language deficits required a more formalized system for Ms. Fitts to observe Student at LINKS and to provide any assistance LINKS' staff required. The District did not demonstrate that LINKS staff and Student's counselor could properly address Student's speech and language deficits for the SY 2010-2011 without using the observation and consultation model used in the FLS class at CHS.

54. While Student no longer requires direct speech and language services, she still requires assistance from the FLS and LINKS staff to meet her unique needs by teaching her skills and working on her goals in class and the community. A primary reason why Student did not require direct speech and language services in her FLS class was that Ms. Fitts observed Student in the class and could provide assistance to the staff. However, District's offer does not contain any provision for a District speech and language therapist to provide this assistance at LINKS. Student requires this service to ensure that her speech and language goals are met. Therefore, the District's offer met Student's speech and language needs for 2010 ESY in the FLS class, but not at LINKS for SY 2010-2011.

Reading Program

55. For the past couple of years, Parent has requested that Student attend the English lab class so she could participate in the District's Read 180 program.¹³ The District denied Parent's request because the District believed that it could meet Student's needs in the FLS class with the SRA reading program. In part because of the District's refusal, Parent enrolled Student at CEC during school hours to improve her reading. The District asserted that it can meet Student's reading needs in the FLS class during the 2010 ESY and at LINKS for the next school year, and that Student did not require the Read 180 program or additional services through CEC to make meaningful educational progress.

56. The District's main reading program in the FLS class was the SRA reading program, which is a direct instruction program designed to address the five reading areas recommended in the NCLB: phonics, decoding, fluency, phonemic awareness, and comprehension. With direct instruction, reading components are broken down for the student, and taught and practiced until the student masters and is able to generalize the reading strategy. The District also implemented the PCI reading program that worked on teaching students more functional reading skills focused on occupational and daily living activities, such as reading fluency and comprehension at the third-to-fourth grade level. Student challenged the District's reading program, asserting that Student had made de minimus progress with its reading instruction, and that any progress made was due to CEC's instruction and its use of the Orton-Gillingham reading instruction.

¹³ Witnesses intertwined the Read 180 program to mean both the class and the reading program. Read 180 is the actual reading program that the District at CHS implemented in its English lab class.

57. Comparing Student's 2006 and 2009 WJTA-III scores, Student made meaningful progress as her grade level equivalency on letter-identification subtest increased from 3.3 to 3.6, reading fluency subtest from 1.4 to 2.2, and passage comprehension remained the same at 1.9. Student's broad reading standard score rose from a 2.3 grade level equivalency on the WJTA-III Broad Reading to 2.6 in 2009, an indication of some progress in light of Student's cognitive impairment. Regarding Student's receipt of Orton-Gillingham instruction and CEC's reading assessment, if Student had the level of success that Ms. Cullinan asserted in her testimony, Student's WJTA-III score should have been much higher, but it was not. Additionally, Dr. Lebby's assessment, with minor accommodations for Student's visual impairment, found Student's reading ability to be about the same level as the District's reading assessment. Therefore, the District demonstrated that Student made meaningful educational progress with the reading instruction in the FLS class based on her improvements as shown on the test scores for the 2007 and 2009 reading assessments.

58. Additionally, Student did not establish that her needs could be met only by the reading instruction at CEC and not the instruction in the FLS class. The reading instruction at CEC focused on improving Student's reading decoding through Orton-Gillingham, and little on reading comprehension. Ms. Cullinan's opinion on how to improve Student's reading in all five areas from the NCLB is not supported by any scientific research, especially considering that decoding was a strength of Student's based on the 2006 WJTA-III, and reading fluency and comprehension were significant deficits. CEC's instruction allowed Student to read words with little understanding of what she was reading. Student needs to understand what she reads for independent living and succeeding in any job.

59. Regarding the Read 180 program, this program has a series for elementary, middle school and high school students. All three programs in Read 180

involve students receiving group instruction from a teacher, and working on individual reading skills on a computer and then individual reading with material on the student's reading level. The English Lab class at CHS had students with significant reading delays, with some students reading at the fourth grade level. The English Lab consists primarily of general education students, with some special education students.

60. The District demonstrated through David Brent Dyck, the CHS English Lab teacher, and Jeanne Cox, District reading specialist, that, regardless of the grade level or reading ability, students who can independently access the program are successful at using the Read 180 program. Student has not demonstrated the ability to work independently in the FLS class and requires repeated redirection to stay on task. Further, even if Student had an aide to assist her with the Read 180 program, Student does not need this program to receive a FAPE as she made meaningful educational progress with the SRA program. In essence, Student's request for Read 180 involves which reading methodology the District should use, and Student's desire to attend a general education class. In matters regarding methodology, the selection is left to the school district so long as the district provides an appropriate education.

61. For the 2010 ESY, the District offered to continue the reading program Ms. Oakes used in her FLS class. For SY 2010-2011, LINKS moves away from a structured reading program to focus more on Student's functional reading, such as reading bus schedules, local and national news, job applications, and instructions. Instruction occurs primarily in a group setting and staff checks on students for comprehension. The testimonies of LINKS' Director Andrea Reed and Ms. Cox, the November 2009 IEP meeting notes, and documents admitted regarding the LINKS program established that the District would work on improving Student's reading, especially reading comprehension, to understand written directions, which she needs for independent

living and employment. The evidence established that LINKS' reading instruction is appropriately geared to improve Student's functional reading.

62. Ms. Reed has been a transitional program specialist with the District for the past 15 years, and has professional experience as the director of the District's workability and transitional partnership programs, working exclusively with special education students. Her duties include staff and parent training, being aware of available opportunities and programs for students, communicating with the Regional Center and California Department of Rehabilitation to ensure proper coordination of services, conducting vocational assessments, overseeing LINKS and the District's KEYS program, which is designed for higher functioning students, and attending IEP meetings. Ms. Reed has made presentations at regional and statewide workability conferences. Based on her experience, Ms. Reed is qualified as an expert in job and transitional programs for youths with disabilities, which includes reading instruction for students in these programs.

63. The parties do not dispute that Student has a significant deficit in reading comprehension, in that she can read and sound out words but that she often does not understand what she reads. For 2010 ESY, the District in its FLS class was to continue the reading instruction that had worked for Student. For SY 2010-2011, the District provided sufficient evidence that the reading program it would implement at LINKS is appropriate to meet Student's unique needs, and geared to allow Student to live independently. Therefore, the District offered Student a reading program for the 2010 ESY and SY 2010-2011 that is reasonably calculated to permit Student to make meaningful educational progress.

Visual Impairment Accommodations

64. Student asserted that the accommodations that Ms. Oakes used in the FLS class for Student's reading, such as using a bookmark for Student to read a line at a time

or a finger to track words, needed to be written into the IEP to ensure that the accommodations would be used in the 2010 ESY FLS class and at LINKS. The District asserted that it need not include all the strategies that Ms. Oakes used in her classroom to assist Student's reading because the accommodations were minor, commonly used by non-disabled students and any teacher who worked with Student would notice Student's visual tracking difficulties and employ similar strategies as Ms. Oakes.

65. The other accommodations in District's November 2009 IEP offer, like additional time to complete work, learning in a quiet environment and repetition of work, are also simple accommodations that a person who worked with Student for any length of time would know to do with Student because of her cognitive impairment and also used with non-disabled students. These accommodations are properly stated in the IEP to give clear notice to Parent and staff of Student's needs, and to avoid having present and future staff guess or have to discover for themselves.

66. Because Student's right eye visual impairment caused her to have problems in seeing all items on the right side of a page and tracking while reading, which were significant enough to cause her to struggle appreciably, the District needed to include the accommodations that Ms. Oakes used in the IEP. Without having these needed accommodations, Student will experience significant difficulties in a new program with staff not aware of Student's visual impairment because no information about the impairment is contained in Student's IEP. Because the accommodations for Student's visual impairment are just as important as the other accommodations in Student's November 2009 IEP, the District should have included them in the IEP to ensure notice and uniformity as Student changes programs after leaving CHS. The failure to do so denied Student a FAPE.

Annual Goals

67. At the November 2009 IEP meeting, Mother did not consent to any of the District's proposed goals. When the District went over the proposed goals at the IEP meetings, Mother did not provide any specific objection to any of the proposed goals, nor request additional goals. At hearing, Student's objection to the District's proposed goals focused on the proposed speech and language goals and independent living skills goals.

SPEECH AND LANGUAGE GOALS

68. At the November 2009 IEP meetings, Ms. Fitts recommended that the District develop two annual goals to address Student's expressive, receptive and pragmatic language deficits. The District developed one goal to address Student's expressive and receptive language by answering "wh" questions (who, what, when, where, and why) about central themes in reading passages. The District also developed this goal to work on Student's reading comprehension deficit. For Student's pragmatic language deficits, the District developed a social-emotional goal for Student to initiate a response that is appropriate to the social context.

69. Regarding the proposed goals to address Student's speech and language needs, Student objected to the expressive and receptive language goal because the District also included a reading goal with the speech and language goal. Student asserted that these goals needed to be worked on separately. Student objected to the social-emotional goal as not being adequate to address Student's pragmatic language deficits because the goal would not be implemented by a speech and language therapist.

70. Regarding the expressive and receptive language goal, the District would work with Student to answer questions based on her understanding of a reading passage, which would require her to listen to questions about the passage to work on

her receptive language and then answer questions for her expressive language. Both Ms. Olsen and Dr. Lebby objected to this goal because they felt that Student should work on reading and speech and language goals separately for Student to receive the appropriate benefit. However, neither demonstrated why Student could not simultaneously work on speech and language and reading goals, with District personnel working with Student to properly answer questions about the core topics in a reading passage. In contrast, Ms. Fitts was persuasive as to how this goal could be properly implemented to address Student's speech and language needs.

71. Student has repeatedly exhibited problems in knowing how to react in social situations, such as handling social conflict and maintaining a conversation. Student's counselor, who, according to the November 2009 IEP, would see Student for 30 minutes a month, and the staff at the ESY class and LINKS program would work with Student on the pragmatic language goal. Student's objection to this goal was that a speech and language therapist should work on this goal with Student during pull-out therapy sessions, and not that Student needed additional pragmatic language goals. However, as noted above, Student did not generalize social stories provided during her speech and language sessions, and needed to work on social interaction in real-life scenarios and not in an artificial clinical setting. The District demonstrated that its staff was qualified to work with Student on this goal and to evaluate her progress on the goal.

72. The District's 2009 assessment accurately identified Student's expressive, receptive and pragmatic language deficits, and the District's November 2009 IEP offered Student sufficient speech and language goals for Student to meet her needs and make meaningful educational progress in these areas of deficit.

READING, WRITING AND MATH GOALS

73. As noted in the above section, Student objected to the District's proposed annual reading goal for her to retell the central ideas of a passage that she read because the District combined this goal with a receptive and expressive language goal. The District established that combining the goals did not diminish the effectiveness of the reading goal because one way to determine Student's comprehension was for her to discuss the passage, which involved her receptive and expressive language skills. Ms. Cullinan did not challenge the District's proposed reading goal at the November 5, 2009 IEP that she attended, or during her testimony. Dr. Lebby's concern that the District could not effectively work on the two areas, reading and speech and language, is unfounded. The District was persuasive that staff could implement the combined goal effectively and that it would functionally meet Student's postsecondary needs as well. For example, Student will be expected, after leaving high school and obtaining employment, to be able to read something and then discuss what she has read to make sure that she has understood job directions.

74. The District also proposed annual writing goals for Student to write two complete sentences, and to properly capitalize names, places and titles. The District's proposed math goal was for Student to work on addition and subtraction problems with numbers up to 20, identify the name and value of coins and to make purchases with money up to \$2.00. The District properly developed these reading and math goals based on Student's performance in her FLS class during the prior year, where she could not perform the skills addressed in the goals. Student needed these skills to be independent and expand the areas where she could obtain employment.

75. Student's vocational program expert, Steve Zivolich, criticized the District's proposed goals for failing to take into consideration best practices to meet the instructional needs of students with severe disabilities and that the goals did not reflect

present-day experiences, such as how people purchase items using methods that no longer require knowing how to count change. Mr. Zivolich is the director of Integrated Resources Institute, which provides school districts, businesses and government entities assistance in developing and working with youths and adults with disabilities. Mr. Zivolich has worked in this area for over 30 years, and made numerous presentations on the topic of employment opportunities for disabled individuals, along with having published studies and taught university-level courses. Mr. Zivolich is qualified as an expert in the area of job training and teaching independent living skills for disabled young adults. Ms. Zivolich's February 2010 evaluation was his first contact with any District program.

76. However, Mr. Zivolich's testimony was not persuasive as he had only met Student a couple of times, observed her in her FLS class for a little over an hour, and did not formally assess her. Based on his limited contact, Mr. Zivolich generalized about the District's proposed goals without knowing whether Student required the goals proposed by the District to succeed. Additionally, Mr. Zivolich objected to the District's proposed goals because of his belief that Student should attend a fifth year of high school in a traditional academic setting. However, his opinion ran counter to the recommendation in the 2005 DCCC report, which he relied on in his evaluation, and he did not explain why the DCCC report recommendations were no longer valid based on Student's present levels of functioning. In contrast, the District's vocational expert, Ms. Reed, and Ms. Oakes persuasively explained Student's need to have the skills in the areas addressed by the goals to succeed after high school in real-world situations.

77. The District established for its proposed reading, writing and math goals that Student had deficits in the areas the goals addressed, and that it need not develop any additional goals in these areas to meet Student's needs. Student's challenge to the District's proposed goals focused on methodological differences regarding the

appropriate educational strategies that the District should employ, and not whether the District failed to address Student's unique needs. Therefore, the District's proposed reading, writing and math goals were reasonably calculated to permit Student to make meaningful educational progress.

INDEPENDENT LIVING GOALS

78. The District proposed three independent living skills goals to assist Student in obtaining and maintaining employment and living independently, based on her present levels of performance. Student criticized the District's proposed goals to follow job site instructions, food preparation, and grocery shopping, because the goals proposed teaching her skills that she was already working on, or that were better learned at home, and for underestimating her abilities.

79. The District based its present levels for the independent living goals on Student's previous employment at a pet store, cafeteria and child care center, along with her performance in the FLS class and 2009 vocational assessment. During the 2009 ESY, Student participated in a District workability program at a pet adoption center, and part of her job included cleaning dog kennels. Student had a one-to-one job coach to help her. LINKS' director, Ms. Reed, was aware of Student's progress via Ms. Reed's contact with the job coach and from filling in for the coach one day. Ms. Reed was persuasive that, even though Student had worked in this position for several weeks, she could not remember the basic instructions for cleaning a dog kennel, even after Ms. Reed reminded her, and Student could not find the needed tools even though they were easily visible. Student had difficulty walking a dog as she had trouble following directions from Ms. Reed about holding the leash.

80. In the fall of SY 2009-2010, at Mother's insistence, Student participated in the District's Regional Occupational Program (ROP) child care program, designed primarily for general education students to obtain employment in child care centers.

Candy Lane, CHS ROP teacher, taught the class, contacted child care centers to find openings for the students and supervised the students' placements. Ms. Lane modified the class as Student was not required to complete all the assigned reading that prepared students for this line of work in areas of child development, including how to handle situations that typically arise in child care employment. Student also was not required to prepare lesson plans that other students prepared. However, Student participated in class discussions and group projects with Ms. Lane's assistance. Student participated in classroom instruction from the start of the school year through October, when all students began their positions in the various child care centers that Ms. Lane found for her students.

81. Ms. Lane found a position in a child care center in which she had placed other students. Ms. Lane selected a child care center working with preschool children, which was very supportive of prior students and whose demand on Student would not be that great. Ms. Lane informed the child care director of Student's cognitive disability and they worked out Student's job duties related to helping the classroom teacher and performing simple tasks, such as putting items away in cubbies and playing with the children. Student did not have a job coach as she was expected to perform the required tasks under the child care center teacher's general supervision. However, Student failed in this placement after less than two weeks because she could not follow simple instructions, was too aggressive in working with the children, and was impolite to the parents when they dropped off their children. The child care center spoke to Ms. Lane about Student's conduct and informed Ms. Lane that it did not want Student to continue working at the center.

82. The FLS class has an occupational guidance component in which students work in locations, such as Walgreens, Dollar Store, Jack in the Box or a local hospital. Student had difficulty with tasks such as stocking, scanning items for inventory, and

preparing salads and sandwiches. Mother limited Student's options because she felt some jobs were demeaning or that tasks that Student worked on, such as wiping tables or food preparation, should be worked on in the home. Ms. Oakes worked as best as possible in the FLS class with Student on vocational skills when her classmates were on job sites. However, the Regional Center's ILS documents demonstrated that Student lacked these basic skills, and that the ILS program, not Mother, was working with Student on performing simple household chores, such as table wiping, and food preparation. However, Mother never shared any ILS documents with the IEP team at the November 2009 meeting, nor informed the District of what the ILS was working on with Student. Mother thus withheld information from the District that demonstrated Student's lack of prevocational skills, and prevented Student from learning those skills in the occupational guidance component of the FLS class.

83. Ms. Reed also performed a vocational assessment for the November 2009 IEP meeting to gauge Student's areas of interests and to inventory the job and independent living skills she possessed. Ms. Reed's assessment found that Student lacked prevocational skills, especially the ability to follow directions and needed assistance to complete tasks, which was consistent with Student's prior job performance.

84. Mr. Zivolich objected to the District's independent living goals as being too simplistic and typical of programs that serve cognitively impaired students by pigeon-holing them into jobs typically performed by these individuals. However, Mr. Zivolich did not assess Student and his report did not reference Student's present or levels of performance as reflected in any of the District's assessments, or the recommendations in the 2005 DCCC report. Mr. Zivolich criticized the District's goals for failing to consider fine motor deficits caused by her cerebral palsy. However, Dr. Lebby's assessment, which included the administration of the Beery-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition, did not find that Student had significant

fine motor deficits. In any event, the District did consider Student's fine motor deficits with the goal for Student to make a sandwich, which required Student to properly spread items on bread. Finally, Mr. Zivolich based his critique of the District's proposed goals on generalizations about what independent and vocational goals should include, and not on Student's specific needs.

85. The District demonstrated the need for Student to independently complete tasks on structured job sites, which also worked on Student's receptive language deficits. Student required this goal based on her inability to follow and remember instructions, as observed by Ms. Reed at the pet adoption center, and reported to Ms. Lane from the child care center and to Ms. Oakes from the cafeteria. The District properly developed the goal for Student to meet her need in this area, to participate in structured job settings and to learn and perform required job tasks.

86. Ms. Oakes recommended the goal for placing items on bread to make a sandwich based on Student's problems when working at the cafeteria in not placing required items or placing too many on sandwiches, and her own observation that Student pressed too hard on the bread, tearing it, when spreading items like peanut butter. Although Mother objected to this goal because she felt that this was a skill Student could learn at home, the evidence established that Mother was not working with Student at home on food preparation. This proposed goal is appropriate for Student as it addresses a fine motor deficit, works on the skill of following directions, and teaches her job skills in food preparation.

87. The final independent living goal was for Student to find items in a grocery store based on a grocery list she prepared. This goal addressed Student's need to follow written directions in that she had to read the list and then find the item. Student also needed to remember where items were in a store and be able to ask for assistance from a store employee, which also worked on Student's pragmatic language. This goal

worked on Student being independent and able to shop on her own and not to rely on others. Therefore, this goal met Student's independent living needs in this area, and was reasonably calculated to permit Student to make meaningful educational progress towards independence.

88. Because of Student's failure to participate in various job opportunities and the limitations placed by her Mother, Student's vocational skills were limited because the District could not work on needed skills in the natural environment of the job sites. The District appropriately developed the goals based on accurate information as to Student's present levels of performance and appropriately designed goals to address Student's areas of need and permit her to develop skills toward postsecondary goals to live independently and obtain and maintain employment. Therefore, the District's independent living skills goals met her unique living skill needs and were reasonably calculated for Student to make meaningful educational progress.

2010 ESY Prevocational Placement

89. For the 2010 ESY, the District offered a placement in its FLS summer class for five weeks, four hours a day in the morning. The District has made the same offer in prior years, and Parent has not allowed Student attend. As found above, for the past two years, Student was in the District's workability program and worked at a District child care center and a pet adoption center. Aside from challenging District's ESY offer because it was not in the LRE, Student objected that it would not offer her the job readiness skills she requires and simply repeated District's prior ESY offers. The District asserted that its offer met Student's need by providing several weeks more of needed functional academics before Student began the LINKS program, and that Student could still enroll in the District's workability program for the afternoon.

90. As found previously, Student required a functional academic program to meet her unique needs in the LRE, and the continuation of the FLS class for the 2010

ESY was appropriate for Student to continue to receive functional academics and occupational guidance. Student did not require a more traditional academic program to meet her unique needs. Additionally, Student would learn job readiness or prevocational skills in the occupational guidance portion of the FLS class. Finally, Student's attendance in the FLS class would permit her to participate in the District's workability program and obtain needed job skills through that program. The District's offer of its FLS class for the 2010 ESY addressed Student's needs for prevocational functional academics and occupational guidance, and supported her access to workability. It was therefore reasonably calculated to provide Student with meaningful educational progress in those areas.

Appropriateness of the LINKS Program

91. For SY 2010-2011, the District offered Student placement in its LINKS program. Besides challenging the District's offer because it did not include a fifth year of high school and was not in the LRE, Student challenged the District's program for not being an appropriate job readiness and independent living program. Student asserted that LINKS did not provide adequate time for Student in community job settings, did not consider Student's vocational interests and did not provide Student with a job coach. The District asserted that LINKS will provide Student with adequate job and independent living training in the classroom and community, and that the program's community and recreational outings allow Student to interact with the public and become a more well-rounded adult, instead of just learning how to work.

MR. ZIVOLICH'S EVALUATION OF LINKS

92. Student's vocational expert, Mr. Zivolich, observed LINKS and Student's FLS class on February 3, 2010. Because of confusion regarding what Mr. Zivolich wanted to see during his observation, as his request to observe students on job sites was not

communicated to the District, he was not able to accompany LINKS students on a job outing.¹⁴ The District did invite Mr. Zivolich to return so he could accompany students at their work sites, but he did not contact the District for a subsequent observation. Mr. Zivolich did speak with District staff about LINKS and obtained documents about the program's objectives and schedule. Based on information he possessed regarding LINKS, it is doubtful that his opinion regarding LINKS would have changed if he had observed a LINKS job site.

93. Mr. Zivolich criticized LINKS for not focusing on the needs of the participants and spending too much time on community and recreational outings, and classroom instruction. Mr. Zivolich felt that the District failed to consider best practices in developing its LINKS program and designed LINKS based on teacher preference and an expected model of what a job and independent living program should be like by segregating students into typical jobs rather than considering the interests of the students. Mr. Zivolich attacked the program for only having scheduled one day a week in which students were in the community working at job sites, and spending too much time on recreational activities, such as going to the library, bowling or a water park. LINKS, in Mr. Zivolich's opinion, failed to adequately include its students into the general community and isolated them.

94. Mr. Zivolich testified that, in his opinion, some of the life skills training that LINKS provided, such as food preparation and shopping, are already part of Student's family activities, should not be repeated and did not reflect Student's and Mother's wishes for what Student should be learning. Mr. Zivolich also opined that the District

¹⁴ Mr. Zivolich evaluation occurred on a school day that Student was typically gone for several periods to attend CEC. No one had informed the District that Student would be attending FLS for the full school day.

needed to provide Student with a job coach who would go out with Student to teach her the skills that she needed in a natural setting, and not in a classroom because of Student's difficulty in generalizing skills. Mr. Zivolich had concerns about Student's safety because her cognitive impairment made it difficult for Student to understand unsafe situations and how to react. Mr. Zivolich recommended that the District design a job training program that focused on more of Mother's and Student's preferences and had Student out more in the community to learn needed skills through a job coach who worked directly with the Student.

MS. REED'S TESTIMONY

95. The District's vocational expert, Ms. Reed, reviewed Mr. Zivolich's report and found it fraught with errors regarding the LINKS program, especially that LINKS is a teacher-driven, not a student-based, program. She established that the District designed LINKS based on recommendations from the United States Department of Labor's report by the Secretary's Commission on Achieving Necessary Skills (SCANS) on job readiness skills for non-disabled and disabled young adults, and the SCANS report recommendations are still valid and used by other school districts. (The Secretary's Commission on Achieving Necessary Skills, U.S. Department Of Labor (June 1991).)¹⁵ The SCANS report recommended programs that ensure that young adults have basic academic skills, the ability to problem solve and a sense of individual responsibility. Further, young adults need: the ability to properly use work resources, including technology; interpersonal skills; the ability to process and work with information; and an understanding of the workplace organization. LINKS follows these recommendations by teaching students functional academics, computer skills, and job and interpersonal skills

¹⁵ <http://wdr.doleta.gov/SCANS/whatwork/whatwork.pdf> (June 30, 2010.)

in the classroom, job sites and the community. Mr. Zivolich was not aware of the SCANS report and its recommendations in evaluating LINKS.

96. As to LINKS not taking into consideration the interests of the students, Ms. Reed was convincing that LINKS considers information from a student's assessment and speaking with the student to develop personal development plans and potential work site options, and that the District would do the same for Student when she starts at LINKS. Additionally, LINKS teaches functional academics based on a student's IEP goals. The drama class offered at LINKS was created based on student requests. Finally, while LINKS has a schedule, the program is flexible in that if a student gets a job, the student can participate in LINKS to the extent available based on the student's job schedule.

97. Ms. Reed correctly criticized Mr. Zivolich's report for downplaying the need for Student to learn skills, such as food preparation, and to participate in community activities, such as recreational outings. She established that programs like LINKS are required by law to provide students with transitional services for independent living and community participation, which include safety skills, not only job readiness services. Mr. Zivolich was not persuasive in his criticism of LINKS for not focusing enough time on job skills and teaching Student skills better taught at home because LINKS is required to focus on independent living and community participation skills, along with job skills.

98. While Mr. Zivolich is extremely knowledgeable about job training programs and general requirements for these programs, he did not analyze sufficiently whether LINKS could meet Student's unique needs because LINKS did not fit the model he would expect a job program to be. Ms. Reed adequately demonstrated that LINKS could meet Student's transitional needs for community participation, independent living, and job skills. The fact that LINKS does not solely have students out in the community on job sites is not improper as LINKS must be designed to meet a multiplicity of student needs, not just job training, and LINKS is flexible in designing a particular program to

meet a student's needs. Therefore, the District's offer of LINKS was reasonably calculated to permit Student to make meaningful educational progress.

Predetermination

99. Under the IDEA, parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. A district must fairly and honestly consider the views of the child's parents expressed in an IEP meeting. While school officials may discuss a child's programming in advance of the IEP meeting, they may not arrive at an IEP meeting with a "take it or leave it" attitude, having already decided on the program to be offered. A district that predetermines the child's program and does not consider the parents' requests with an open mind has committed a procedural violation, which has denied the parents' right to participate in the IEP process. Student contended that the District predetermined Student's placement as it did not consider her unique needs and followed a script in making its offer because of Student's cognitive impairment. The District disputed Student's assertion and argued that it considered Student's unique needs and Mother's requests during the November 2009 IEP process and that its offer was designed to meet Student's unique needs and was not a "cookie cutter" offer.

100. At the November 2009 IEP meetings, Mother was an active participant in the meeting in discussing the services and educational program she felt that Student required. Mother was insistent that Student attend a fifth year of high school because she should never have been in the FLS class, and that District needed to provide Student with more opportunities to interact with typically developing peers. Mother also objected to the District's job sites and duties for the occupational guidance portion of the FLS class as being beneath Student's abilities.

101. The District members of the IEP team considered the information that Mother presented, but properly concluded that Student required a functional life skills program based on Student's levels of performance and the assessment information reviewed. Mother presented no information to the District since the 2006 administrative hearing or at the IEP meeting regarding Student's needs that would warrant a change in placement. Additionally, neither Mother nor Ms. Cullinan provided an explanation at the November 5, 2009 IEP meeting why Student required the Read 180 program, other than that Student would have more time with typically developing peers in the English lab class, or why the District's reading goals did not meet Student's needs. Finally, Mother did not share information from Student's ILS program at the Regional Center regarding the skills the ILS program was working on, which would have revealed that Mother was aware Student did not possess basic skills, such as being able to do household chores.

102. The fact that the District did not offer what Mother requested does not mean that the District predetermined its offer. The District considered all relevant information from its assessment, Student's performance in class and speech and language therapy sessions, participation in job programs, on-campus observations and information presented by Mother and Ms. Cullinan. Therefore, the evidence established that the District did not predetermine its November 2009 IEP offer, and Mother actively participated in the IEP process concerning the proposed placement and services.

LEGAL CONCLUSIONS

1. As the petitioning party, the District has the burden of proof in this matter. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

IEE REQUEST

2. The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and

academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) In evaluating a child, a district must assess the child in all areas related to a suspected disability. (Ed. Code, § 56320, subd. (f); 20 U.S.C. § 1414(b)(3)(B).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

3. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: 1) whether the student may need special education and related services; 2) the basis for making that determination; 3) the relevant behavior noted during observation of the student in an appropriate setting; 4) the relationship of that behavior to the student's academic and social functioning; 5) the educationally relevant health, developmental and medical findings, if any; 6) if appropriate, a determination of the effects of environmental, cultural, or economic

disadvantage; and 7) consistent with superintendent guidelines for low-incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parents at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

4. A student may be entitled to an IEE if he or she disagrees with an evaluation obtained by the public agency and requests an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1)(2006)¹⁶; Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].) In response to a request for an IEE, an educational agency must, without unnecessary delay, either: 1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or 2) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

¹⁶ All subsequent references to the Code of Federal Regulations are to the 2006 version.

ISSUE ONE: MAY THE DISTRICT DENY STUDENT AN IEE IN SPEECH AND LANGUAGE BECAUSE ITS ASSESSMENTS, PRESENTED ON NOVEMBER 9, 2009, WERE CONDUCTED IN COMPLIANCE WITH THE LAW?

ISSUE TWO: MAY THE DISTRICT DENY STUDENT AN IEE IN READING ABILITIES BECAUSE ITS ASSESSMENTS, PRESENTED ON NOVEMBER 9, 2009, WERE CONDUCTED IN COMPLIANCE WITH THE LAW?

5. Regarding the District's November 2009 speech and language assessment by Ms. Fitts, pursuant to Factual Findings 4-8 and Legal Conclusions 2-4, the District conducted the assessment with a qualified assessor, assessed Student in all areas of suspected disability, used uncontroverted tests, and obtained accurate information regarding Student's speech and language deficits. Student's private speech and language assessment by Ms. Olsen obtained similar results, and her recommendation that Student continue to receive direct speech and language therapy was designed to maximize Student's potential, not to provide meaningful educational progress. Therefore, Student is not entitled to a speech and language IEE as District properly assessed Student.

6. As to the District's November 2009 reading assessments, pursuant to Factual Findings 9-13, 25 and 29 and Legal Conclusions 2-4, qualified personnel conducted the District's assessment, used appropriate test instruments, and obtained accurate information regarding Student's reading deficits. However, pursuant to Factual Findings 17-21, 23 and 26-31, the District failed to take into consideration the impact of Student's right eye visual impairment in conducting the assessment, despite being on notice of the visual deficit by the 2005 DCCC report. However, the District still obtained accurate information regarding Student's reading level, as corroborated by Dr. Lebby's assessment, showing that Student read at the second grade level and her greatest deficit was reading comprehension. Student's right eye visual impairment did make it more difficult for Student to read as she had trouble following lines and missed words,

and Dr. Lebby correctly noted that Student needed a reading professional knowledgeable about visual impairments to develop accommodations and strategies to make it easier for her to read. Therefore, Student is entitled to an IEE regarding her right eye visual impairment to develop reading strategies and further accommodations for Student that she would need for independent living and employment.

ELEMENTS OF A FAPE

7. Under the IDEA and State law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

8. School districts are required by title 20 of the United States Code, section 1414(d)(1)(A)(i), to create an IEP for each child with a disability that includes: (1) a statement regarding the child's then-present levels of academic achievement and functional performance; (2) measurable annual goals, including academic and functional goals designed to meet the child's educational needs and enable the child to make progress; (3) a description of how the child's progress will be measured; (4) a statement of the special education and related or supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; (5) a statement of the program modifications or supports that will be provided; (6) an explanation of the extent to which the child will not participate with non-disabled children in the regular class; and (7) other required information, including the anticipated frequency, location, and duration of the services. (34 C.F.R. § 300.320; Ed. Code, § 56345, subd. (a).)

9. Children who are eligible for special education are entitled to a FAPE that not only includes specially designed instruction to meet the child's unique needs, but

related services as well. (20 U.S.C. §§ 1400(d), 1401(a)(9), (26) & (29); Ed. Code, § 56000.) “Related services” are transportation and other developmental, corrective and supportive services, such as speech therapy, that may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

10. In *Board of Educ. v. Rowley* (1982) 458 U.S. 176 [73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student’s abilities. (*Rowley, supra*, at p. 198.) School districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d. 938, 950-953. (*Mercer Island*)). The Ninth Circuit 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.2d 1141, 1149. (*Adams*).)

11. There are two parts to the legal analysis of a school district’s compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child’s unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was implemented. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams, supra*, 195 F.3d 1141, 1149.)

12. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, at pp. 205-06.) However, a procedural error does not automatically require a finding that a FAPE was denied. Since July 1, 2005, the IDEA has codified the pre-existing rule that a procedural violation results in a denial of a FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

13. As long as a school district provides an appropriate education, the methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208; see also, *Adams, supra*, 195 F.3d 1141; *Pitchford v. Salem-Keizer School District* (D. Ore. 2001) 155 F.Supp.2d 1213, 1230-1232; *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84. (T.B.).) As the First Circuit Court of Appeal noted, the *Rowley* standard recognizes that courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*T.B., supra*, 361 F.3d 80, 84 (citing *Roland M.*, 910 F.2d at pp. 992-93).) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses his or her basic needs, courts should be loath to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs." (*Roland M. v. Concord Sch. Committee* (1st Cir. 1990) 910 F.2d 983, 992 (citing *Rowley*, 458 U.S. at p. 202).)

14. Recently, the Ninth Circuit Court of Appeals, in *Mercer Island, supra*, 592 F.3d. 938, 952, reiterated its position that a district is not necessarily required to disclose its methodologies in an IEP offer. The Court found that it is not always necessary for a school district to specify a methodology for each student with an IEP if specificity is not

necessary to enable the student to receive an appropriate education. In finding that the district had not committed a procedural violation of the Act by failing to specify the teaching methodologies it intended to use, the court stated, "We accord deference to the District's determination and the ALJ's finding that K.L.'s teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective." (*Ibid.*)

LRE

15. Federal and State law require a school district to provide special education in the LRE. A special education student must be educated with non-disabled peers "to the maximum extent appropriate," and may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general education classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii).) In light of this preference, and to determine whether a child can be placed in a general education setting, the Ninth Circuit, in *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403, adopted a balancing test that requires the consideration of four factors: (1) the educational benefits of placement full-time in a less restrictive class; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the less restrictive class; and (4) the costs of mainstreaming the student.

TRANSITION SERVICES

16. "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).)

PARENTS' RIGHT TO PARTICIPATE IN THE EDUCATIONAL DECISION-MAKING PROCESS

17. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

18. A school district has the right to select a program for a special education student, as long as the program is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. 2007) 2007 U.S. Dist. Lexis 9135; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d

880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 47 IDELR 216.) Nor must an IEP conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parent's desires."], citing *Rowley, supra*, 458 U.S. at p. 207.)

19. A school district is required to consider the results of a privately procured assessment when developing an IEP. (Ed. Code, § 56341.1.) However, the school district is not required to adopt its recommendations. (Ed. Code, § 56329, subd. (c).)

20. Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist., supra*, 552 F.3d 786, 801, fn. 10.) However, school officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP meeting. (*N.L. v. Knox County Schs., supra*, 315 F.3d at p. 693, fn. 3.)

ISSUE 3: WAS THE IEP OF NOVEMBER 9 AND 16, 2009, FOR THE 2010 ESY AND SY 2010-2011 REASONABLY CALCULATED TO PROVIDE STUDENT WITH MEANINGFUL EDUCATIONAL PROGRESS IN THE LRE?

21. Pursuant to Factual Findings 14-16 and 45-54 and Legal Conclusions 5 and 7-14, the District's offer to cease direct speech and language services for Student did not deny her a FAPE as her speech and language abilities were commensurate with her cognitive abilities. Additionally, Student did not benefit from the direct speech and language services Ms. Fitts provided because Student could not generalize the skills learned in the therapy sessions to real-world situations. Regarding the District's speech and language offer for the 2010 ESY, the District's offer was reasonably calculated to provide Student with meaningful educational progress because of the availability of the

speech and language therapist for the FLS class to observe and consult with the teacher. However, for the LINKS program for SY 2010-2011, the District did not offer the required assistance of a speech and language therapist to observe Student and assist the LINKS staff in providing strategies to meet her needs. Ms. Fitts would continue to be assigned Student at LINKS. However, Ms. Fitts testified that she has rarely gone to LINKS for any of the FLS students she continued to be assigned. The evidence about LINKS did not show that any speech and language therapist regularly consults with the program. While the LINKS staff are qualified to implement Student's speech and language goals, especially pragmatic language, Student needed a speech and language therapist to regularly observe the program and consult with staff because of her needs. Therefore, the District failed to offer adequate speech and language services at LINKS that were reasonably calculated to enable Student to make meaningful educational progress.

22. Pursuant to Factual Findings 14-16 and 35-44 and Legal Conclusions 7-15, the FLS class for the 2010 ESY and LINKS for SY 2010-2011 were placements the in the LRE for Student. Student would receive a greater educational benefit with the District's proposed placements because of her need for a functional life skills program, more than an academic program at CHS, as demonstrated from information in the District's and Dr. Lebby's assessments, school and job site performance, the ILS program, the 2005 DCCC report and the 2006 Decision. Mr. Zivolich's opinion that Student should attend a fifth year of high school was not supported by any relevant assessment information as to Student's abilities and any benefit she would receive. The District's offer provided Student non-academic benefits as she would be able to interact with members of the community when working at a job site or during community outings. Student had not been a disruptive influence in regular education classes she attended at CHS, and program cost is not an issue in this case. A balancing of the factors establish that the

District's November 2009 placement offer is the LRE for Student because of her need to obtain functional life skills to live independently.

23. As to Student's need for additional reading services and accommodations, pursuant to Factual Findings 14-16, 25, 29 and 56-63 and Legal Conclusions 6-14, Student's attendance at CEC did little to increase her reading skills. While Student's decoding skills improved, she did not understand what she read because CEC did not work sufficiently on reading comprehension. Further, the District need not provide Student with the Read 180 program because the SRA and PRI programs met her needs and she did require the Read 180 to meet her needs. For the 2010 ESY, the District's offer provides Student with sufficient assistance because the SRA and PRI reading programs have been successful in permitting Student to make meaningful educational progress. For SY 2010-2011, the District established that the reading instruction at LINKS would allow Student to meet her reading goals and to improve her reading comprehension as the reading instruction. However, pursuant to Factual Findings 64-66, the District's failure to include in the IEP accommodations to address Student's unique needs related to her visual impairment denied her a FAPE.

24. Regarding the District's proposed annual goals, pursuant to Factual Findings 68-72 and Legal Conclusions 7-14, the District's November 2009 IEP contained adequate speech and language goals. The District's proposed expressive and receptive language goal for Student to answer questions regarding reading passages was appropriate because she needed to comprehend what she read and then answer questions for employment and independent living. Finally, the District's social-emotional goal was sufficient to meet Student's pragmatic language needs on how to properly interact with peers and members of the community.

25. As to Student's reading goals, pursuant to Factual Findings 73-77 and Legal Conclusions 7-14, the District established that Student's primary deficit was

reading comprehension and the combined reading and speech and language goal was appropriately designed to meet Student's unique needs. Regarding Student's math and writing goals, the District demonstrated that the goals were based on Student's present levels of performance and designed to address her unique needs. Pursuant to Factual Findings 78-88, the District's proposed independent living goals were based on Student's present levels of performance and appropriately designed to address her unique needs.

26. Pursuant to Factual Findings 73-77 and 89-98 and Legal Conclusions 7-16, the District's offer of the FLS class for 2010 ESY and LINKS for SY 2010-2011 was reasonably calculated to permit Student to make meaningful educational progress. The FLS class for the 2010 ESY was a bridge before Student began LINKS and, based on Student's needs at the time of the November 2009 IEP meetings, was reasonably calculated to meet her needs to learn prevocational and functional living skills and to make meaningful educational progress. Regarding LINKS, the District appropriately designed this program to meet the needs of pupils, like Student, with significant cognitive impairments to obtain skills to live independently, participate in the community and obtain employment. Mr. Zivolich's criticism of LINKS that it did not focus exclusively on teaching students job skills was not persuasive because he failed to consider the other legal requirements placed on the District when providing transition services. Ms. Reed established that LINKS is designed to meet the needs of the students based on IEP goals. Therefore, the District's placement offer was reasonably calculated to permit Student to make meaningful educational progress.

27. Finally, pursuant to Factual Findings 100-102 and Legal Conclusions 7-14, 17-20, the District did not violate Student's procedural rights as it did not predetermine its November 2009 IEP offer. The District considered the information provided by Mother and Ms. Cullinan at the IEP meetings, and discussed the possible options. The

fact that the District did not give Mother what she requested did not mean that the District did not have an open mind at the meeting. Therefore, the District did not predetermine its November 2009 IEP offer. Accordingly, the evidence did not establish that Mother's right to participate meaningfully in the IEP process was significantly impeded in any way and there was no denial of a FAPE on that basis.

ORDER

1. The District's November 2009 speech and language assessment was appropriate. The District is not liable for the costs of a speech and language IEE.

2. The District's November 2009 reading assessment was not appropriate. Within 90 days of the date of this decision, the District shall provide Student with an IEE regarding Student's visual impairment at the District's expense, to be conducted by a qualified reading specialist knowledgeable about visual impairments. The District shall hold an IEP meeting as required by law to discuss the findings of the assessment and any accommodations recommended by the assessor to include in Student's IEP.

3. The District's November 5 and 19, 2009 IEP provided Student with a FAPE in the LRE, except for the District's failure to include, for SY 2010-2011 at LINKS, speech and language observation and consultation, and accommodations for Student's reading due to her visual impairment.

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. District fully prevailed on Issue 1. District partially prevailed on Issues 2 and 3. Student partially prevailed on Issues 2 and 3.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 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: July 22, 2010

_____/s/_____
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings