

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS, on Behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010050661

DECISION

Administrative Law Judge Glynda B. Gomez, Office of Administrative Hearings, heard the above-captioned matter in Van Nuys, California on June 21, 2010, and in Los Angeles, California on July 26, 2010, and September 14, 2010.

Student was represented by Jennifer Guze Campbell, attorney at law. Jim Campbell, a paralegal, was also present on behalf of Student. Neither Student nor her parents were present. Respondent Los Angeles Unified School District (District), was represented by Patrick J. Balucan, Associate General Counsel. Julie Hall-Panameno, Litigation Coordinator for District attended the hearing on June 21, 2010, and Joyce Kantor, District Due Process Specialist, attended the hearing on July 26, 2010, and September 14, 2010.

Student's Due Process Hearing Request was filed on May 18, 2010. The hearing commenced on June 21, 2010, and for good cause and based upon joint motion of the parties, was continued to July 26, 2010, and September 14, 2010. At the request of the parties, the matter was continued to September 29, 2010, and the record held open for the submission of closing briefs. The record was closed and the matter was submitted on September 29, 2010.

ISSUES

1. Did District deny Student a free appropriate public education (FAPE) for the 2009-2010 school year by failing to assess Student in all areas of suspected disability including audiology, auditory processing, occupational therapy for both fine and gross motor skills, and vision?¹
2. Did District deny Student a FAPE for the 2009-2010 school year by failing to assess Student within 60 days of receiving parental consent for assessment?
3. Did District deny Student a FAPE for the 2009-2010 school year by not permitting Student's mother to fully participate in the January 19, 2010 individualized education program (IEP) team decisions about proposed assessments of Student?
4. Did District deny Student a FAPE for the 2009-2010 school year by failing to provide Student with appropriate special education and related services in the areas of resource support and speech/language therapy?²

FACTUAL FINDINGS

1. Student is a six-year-old girl who at all relevant times resided within the District.
2. For the 2008-2009 school year Student attended District's Lew Sand Weltor Preschool headstart program. During the same time period, Student also attended afternoon preschool classes at her church. On December 1, 2008, Mother

¹ On the first day of hearing, Student withdrew the issue of whether District denied Student a FAPE by not assessing in the area of behavior.

² On the first day of hearing, Student withdrew the issue of whether or not Student was denied a FAPE in the area of behavioral support services.

signed a headstart assessment plan which was provided to headstart on December 8, 2008. The assessment plan provided for assessment in the areas of health and development, including vision, hearing and language function. On December 16, 2008, speech and language pathologist Laurie Tukey (Tukey), an employee of Speech Language Educational Associates completed an assessment of Student. Tukey utilized two standardized tests, the Preschool Language Scale-Fourth Edition (PLS-4) and the Goldman-Fristoe Test of Articulation (Goldman-Fristoe). Tukey also conducted an oral peripheral examination, interviewed Student's teacher and observed Student in the classroom. Tukey found Student's oral, expressive and pragmatic language to be within normal limits. Tukey opined that Student's speech was 60% intelligible. Tukey opined that Student demonstrated delays in articulation. She found that the delays would impact Student's ability to communicate in the classroom and her ability to access the school curriculum. Student passed the hearing and vision screenings.

3. At her initial IEP team meeting on January 21, 2009, Student was determined to be eligible for special education and related services under the category of speech and language impairment (SLI) due to delays in articulation skills and poor intelligibility. For the remainder of the 2008-2009 school year, the IEP team offered a placement in a general education pre-kindergarten class and 30 minutes of speech therapy per week. For the 2009-2010 school year, the IEP team offered a general education kindergarten classroom at 49th Street Elementary School, her school of residence, and one 30-minute session of speech therapy per week. Mother consented to the IEP.

4. Student attended 49th Street Elementary School for the 2009-2010 school year. Student's annual review IEP meeting was held on January 19, 2010. At that time, Mother, her advocates James Wiley Campbell and Jim Campbell, and her attorney Jennifer Guze Campbell, presented District with a nine page request for assessment. The

request asserted that Student's areas of suspected disability "include, but are not limited to: anxiety, ADHD, Autism, dyslexia, behavioral/emotional inappropriateness, developmental delays, cognitive function, executive function gross motor, fine motor, speech, language, auditory processing, hearing, sensory, sensory integration, visual processing, vision, reading, mathematics, social interaction, hand and eye coordination, and working memory." The document made demand for assessment in the following areas:

1. Comprehensive pre-academic/academic evaluation;
2. Comprehensive learning potential and developmental evaluation;
3. Comprehensive language skills evaluation;
4. Comprehensive auditory skills evaluation;
5. Comprehensive visual skills;
6. Comprehensive fine motor skills evaluation;
7. Comprehensive gross motor skills evaluation;
8. Comprehensive social/emotional behaviors status evaluation;
9. Audiological assessment;
10. Eyesight assessment; and
11. Health assessment and physical evaluation.

5. The assessment request also detailed what types of standardized tests were to be used and the information each measure should provide and what types of observations should be performed. Pursuant to the document, Mother also requested copies of "all evaluation results, notes, test sheets, test work sheets, instructions, and evaluator instruction manuals" to be sent to Mother "immediately after the evaluations have been complete." The document also requested the District provide a list with the credentials of each evaluator, general experience of each evaluator, and number of times each evaluator had given each test used after completion of the assessment.

Mother also requested that the District assessment plan include "the names of the initial proposed tests, their purpose, and a list of subsequent tests that may be administered as indicated by the results of the initially proposed tests" and "the job title of the proposed assessor."

6. At the January 19, 2010 IEP meeting, District's attorney stated that District would respond to the request for assessment in writing. There was no further discussion of the assessment request at the January 19, 2010 IEP meeting and Mother did not request that an IEP meeting be held or reconvened to discuss her assessment proposal.

7. At the January 19, 2010 annual IEP meeting, the District members of the IEP team expressed that Student should remain eligible for special education and related services under the category of SLI. The District members of the IEP team offered placement in a general education class and speech and language therapy twice a month for a total of 60 minutes per month. Mother did not consent to the IEP. Instead, she requested that Student be provided with speech therapy once a week for 30 minutes per session on a pull-out basis in a group of no more than two children. Mother also requested that the therapy not be conducted during language arts or math instruction times. In addition, she requested that Student be placed in a classroom with "students who speak English as a first language."

8. Because Mother did not consent to implementation of the January 19, 2010 IEP or the reduction in speech and language therapy, District continued to provide 120 minutes per month of speech and language therapy pursuant to the last agreed upon and implemented IEP dated January 21, 2009.

9. On February 2, 2010, Corinne H. Ramos, Assistant Principal responded to the request for assessment with a letter and a proposed assessment plan. The proposed assessment plan provided for assessment in the following areas:

- (1) Health and Development, including Vision and Hearing to be conducted by a school nurse or physician;
- (2) General Ability to be conducted by a psychologist;
- (3) Academic Performance to be conducted by a special education teacher;
- (4) Language Function to be conducted by a psychologist and speech language pathologist;
- (5) Motor Abilities to be conducted by a psychologist;
- (6) Social-Emotional Status to be conducted by a psychologist; and
- (7) Self-Help, including Orientation and Mobility conducted by a psychologist.

10. In her letter, Ramos indicated that District declined to conduct a medical examination of Student's vision performed by an optometrist or ophthalmologist because Student had passed a vision screening in 2008 and there had been no indication that vision was an area of need for Student. Similarly, District declined to conduct an audiological assessment because Student had passed her 2008 hearing screening and there had been no indication that hearing was an area of need for Student. The letter indicated that District would use appropriately credentialed personnel and that assessment tools, observations and strategies would be chosen to provide the IEP team with relevant information. Ramos also indicated that some of the assessments requested were unnecessary or inappropriate and that District would not permit Parent to dictate what instruments were used in the assessment.

11. Ramos declined to provide Mother with the names or qualifications of the proposed assessors. She indicated that the District would "identify each assessor on the assessment report" and referred Mother to the California Commission of Teacher Credentialing to research the qualifications of each assessor. Ramos indicated that since the assessment had not been completed, there were no documents to be provided and Mother could make another request when the assessments were completed and records

existed. She expressly stated that Mother would be provided with a copy of the assessment report once the assessment was completed. She declined to provide testing instruction manuals on the grounds that such materials were protected by copyright. Included with the letter and assessment plan was an informational sheet which gave general descriptions of the assessment categories and standardized tests which might be used for each category. The assessment plan provided for evaluation in the areas of health and development, including vision and hearing, general ability, academic performance, language function, motor abilities, social-emotional status and self-help, including orientation and mobility.

12. On February 8, 2010, attorney Jennifer Guze Campbell, wrote to Kelly Barnes, Assistant General Counsel for the Los Angeles Unified School District expressing Mother's consent to the February 2, 2010 assessment plan.

13. At hearing, District stipulated that the assessment should have been completed and that an IEP meeting to discuss the assessment results should have been held on or before April 9, 2010 within 60 days of receipt of the assessment plan by District. District also stipulated that the IEP meeting was not held until June 1, 2010, approximately 53 days late and after the filing of the due process complaint in this case. The school psychologist assigned to the 49th Street Elementary School was out on medical leave during this time period and did not start the assessment of student within statutory time lines.

14. District speech and language pathologist Kao conducted a speech and language assessment of Student on April 21, 2010. Kao earned a bachelor of arts degree in linguistics from the University of Alaska at Fairbanks and a master of science in speech and language pathology from California State University at Northridge. She holds a preliminary credential for speech and language pathology and is in the process

of completing her certification of clinical competence through the American Speech and Hearing Association.

15. Kao was candid, credible and knowledgeable throughout her testimony. She provided clear and thoughtful testimony in response to all questions. She did not attempt to answer questions beyond her area of expertise, but clearly explained the assessment tools, results and the reasoning behind her recommendations.

16. For the assessment, Kao interviewed Mother and Student's teacher, made classroom observations, clinical observations and administered standardized assessments. Kao administered the Goldman-Fristoe, Test of language Development Primary: Fourth Edition (TOLD), and the Oral and Written Language Scales (OWLS). Kao also elicited a connected speech sample and an informal language sample. Kao also conducted an oral periphery examination in which she determined that Student's lips, tongue, teeth, palate, and mouth were adequate for speech production.

17. Student performed within the average range on the Goldman-Fristoe, TOLD and OWLS. The Goldman-Fristoe is used to assess the articulation of consonants and single words by individuals aged two years to 21 years. The TOLD is used to measure expressive language development in individuals ages four through eight years and 11 months. The OWLS is used to assess expressive and receptive oral and written language in individuals ages three through 21. Kao found Student's voice quality and fluency to be adequate.

18. In the informal language sample and connected speech sample, Kao found that Student had appropriate semantics, grammar and pragmatics. However, she found that Student's language sample was only 45 to 65 percent intelligible. In the connected speech sample, Kao found that Student made inconsistent sound and syllable substitutions and deletions. These errors resulted in reduced intelligibility. Consistent with Kao's findings, Mother advised Kao that she could only understand about half of

Student's speech and the classroom teacher reported that Student's speech was 30 to 40 percent unintelligible.

19. Although Student's teacher believed that Student was able to access the Kindergarten curriculum, Kao recommended 240 minutes per month of speech and language therapy for Student and continued eligibility for special education as a student with speech and language impairment. Kao found that Student's reduced intelligibility made it difficult for others to understand her and therefore impeded her ability to fully access and participate in the general education classroom curriculum. Kao also reasoned that as Student progresses in the general education curriculum, the demands for oral presentation will increase and her access to the curriculum would be reduced without speech and language therapy.

20. Special education teacher Keisha Zepeda (Zepeda) conducted an academic assessment of Student on May 4, 2010. Zepeda reviewed Student's health and development records and testing data, observed Student in the classroom and interviewed Student's teacher Gail Lonseth. Zepeda also administered the Kaufman Test of Educational Achievement, Second Edition (KTEA). The KTEA is a measure of academic achievement for use with individuals ages 4 to 25 years. Zepeda administered the letter and word recognition subtest of the reading composite, the written expression subtest of the written language composite and the math concepts/applications and math computation subtests of the math composite. Student performed within the average range on all subtests and received reading, writing and math composite scores within the average range. Zepeda's testing, consistent with Student's classroom performance revealed Student to function within the average range in relation to her peers and same aged students.

21. Jimena Del Pozo (Del Pozo) is employed by District as a school psychologist. She is assigned to San Pedro Street Elementary School. Due to the medical

leave of the 49th Street Elementary School psychologist, Del Pozo was asked by District to perform a psychoeducational assessment of Student. Del Pozo received the assignment in the first week of May of 2010 and immediately began her assessment of Student.

22. Del Pozo earned a bachelor of arts degree in psychology from the University of California at Irvine in 1993 and a master of arts in school psychology from California State University at Los Angeles in 1998. She holds a Pupil Personnel Services credential in school psychology. Del Pozo taught Kindergarten and first grade in District for two years before becoming a school psychologist. Del Pozo was a school psychologist in New York for four years and has been a District school psychologist for approximately seven years. Her duties as a school psychologist include assessment of students, attending IEP meetings, counseling students and collaborating with teachers, district personnel and parents. Del Pozo was candid, credible and knowledgeable throughout her testimony. She carefully and thoughtfully responded to each question posed and provided detailed, logical explanations for her conclusions and recommendations.

23. Del Pozo conducted her assessment of Student on May 10, 2010, May 11, 2010, May 17, 2010, and May 18, 2010. Del Pozo reviewed Student's health and development records, school records, prior assessment reports and Kao's recent speech assessment. She also interviewed Mother and Student's teacher Gail Lonseth. She conducted observations of Student in the classroom, on the playground and during test administration. Del Pozo used the following tools to assess Student: the Cognitive Assessment System (CAS), Motor-Free Visual Perception Test-3 (MFVPT3), Test of Auditory Perceptual Skills-3 (TAPS3), Bender-Gestalt-II (Bender II), Developmental Profile-3 (parent), Behavioral Assessment System for Children-2 (parent and teacher)(BASC-2), Kinetic Family Drawing, and Draw-A-Person tests.

24. Del Pozo used the BASC-2 and the Developmental Profile-3 to evaluate Student's social emotional status. The measures did not reveal any areas of concern or weakness in the school environment. The measures did reveal concerns about relations with siblings and following directions in the home environment. Del Pozo gave Mother some community referrals for parenting training to assist with the home concerns.

25. Del Pozo evaluated Student's visual motor integration, visual perceptual, fine motor and gross motor skills using the Bender II , MVPT 3, Developmental Profile-3, observation, parent interview and teacher interview. Student performed in the average range on all standard measures. Student's teacher and Mother reported that Student had average to above average physical skills.

26. Del Pozo evaluated Student's cognitive ability using the CAS, Bender II, MFVPT 3, Developmental Profile 3, and TAPS3. Student performed in the high average range in planning and attention. She performed in the average range in simultaneous processing and within the low average range in successive processing. Student scored in the overall average range in areas of auditory and visual perceptual skills. Student's relative weaknesses were in auditory phonologic skills and auditory word discrimination where she performed in the low average range. She performed in the below average range in phonological blending which refers to the ability to blend sounds into words. Del Pozo found this to be consistent with the results of the speech and language assessment and Student's articulation deficit. Del Pozo did not see any indications of hearing or vision impairments during her testing. Had she seen evidence of such impairments, she would have referred Student to the school nurse for further assessment in the appropriate area.

27. Del Pozo found Student to be of average to high average cognitive ability with no indication of any processing disorder. She found that Student had adequate social skills, adaptive and self help skills, coping skills, and self-concept. Del Pozo opined

that Student demonstrated adequate gross and fine motor skills, auditory processing, visual processing, visual conceptualization, association and expression and was well-behaved at school. Based upon the assessment data, Del Pozo opined that Student did not qualify for special education under the categories of specific learning disability, autism or other health impairment, but continued to meet eligibility under the category of speech and language impairment.

28. Student passed a school hearing screening on August 11, 2008 and a vision screening on February 4, 2010.

29. Student did not produce any evidence that Student had educational needs or disabilities in the areas of audiology, auditory processing, fine motor skills, gross motor skills or vision.

30. Student did not produce any evidence that she required resource specialist (RSP) support.

31. Student did not produce any evidence that she required speech and language therapy in excess of what District recommended. Student did show that she was deprived of 240 minutes (4 hours) of speech and language therapy during the period of April to June 2010, while the assessment was delayed. The assessment resulted in a recommendation for an increase from 120 minutes to 240 minutes per month of speech and language therapy. While the assessment and IEP meeting were delayed, Student received only the 120 minutes per month of speech and language therapy contained in the last agreed upon IEP. Had the assessment and IEP meeting been timely, Student would have received the full recommended amount of 240 minutes per month of speech and language during the period of April 2010 to June 2010. Student did not provide any evidence that she was unable to access the general education curriculum or otherwise harmed by the loss of 240 minutes of speech and language therapy.

LEGAL CONCLUSIONS

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

ISSUES ONE AND TWO – TIMELY ASSESSMENT IN ALL AREAS

2. In Issue One, Student contends that District failed to assess in all areas of suspected disability when it did not specifically assess her in the areas of audiology, auditory processing, fine motor skills, gross motor skills and vision and thereby denied her a FAPE for the 2009-2010 school year. In Issue Two, Student contends that she was denied a FAPE by District's failure to assess Student and conduct an IEP meeting within 60 days of consent to the February 2, 2010 assessment plan. As to Issue One, District contends that it assessed Student in all areas of suspected disability including auditory processing, motor skills and vision and that an audiological assessment was not required. As to Issue two, District contends that although it did commit a procedural violation of the IDEA by failing to conduct the assessment and IEP meeting within statutory timelines, the violation did not result in a denial of FAPE because any loss of speech and language therapy to Student was nominal and the violation did not significantly impede Mother's ability to participate in the IEP process.

3. A student's parent or the responsible public educational agency may request an initial evaluation to determine whether a child is eligible for special education and related services on the basis of a qualifying disability. (20 U.S.C. §1414(a)(1)(A), (a)(1)(B).) The initial evaluation must consist of procedures to determine whether a child is a child with a qualifying disability and to determine the educational needs of the child. (20 U.S.C. § 1414(a)(1)(c).) In conducting the evaluation, a district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent

that may assist in determining whether the child is a child with a disability and the contents of an individualized education program. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320.) The district may not use any single assessment as the sole criteria for determining eligibility and must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (20 U.S.C. § 1414(b)(2)&(c); Ed. Code, § 56320.)

4. For purposes of evaluating a child for special education eligibility, the District must ensure that the child is assessed in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (*See Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

5. The school district or local educational agency is required to conduct an assessment and convene an IEP meeting within 60 days of receiving parental consent to assessment. (20 U.S.C. § 1414(a)(C)(I); 34 C.F.R. § 300.303; Ed. Code, § 56344.)

6. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School District, et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) In matters alleging procedural violations, the denial of a FAPE may only be shown if the procedural violations impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see also *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877,890-892.)

7. Under the Individuals with Disabilities Education Act (IDEA) and companion state law, students with disabilities have the right to FAPE. (20 U.S.C. § 1400; Ed. Code, § 56000.) FAPE means special education and related services, under public

supervision and direction that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) "Related Services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, §56363, subd. (a).)

8. In *Board of Education. v. Rowley* (1982) 458 U.S. 176 [73 L.Ed. 2d 690] (*Rowley*), the Supreme Court held that the basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services, which are individually designed to provide educational benefit to a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Rowley, supra*, at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) De minimus benefit, or only trivial advancement, however, is insufficient to satisfy the Rowley standard of "some" benefit. (*Walczak v. Florida Union Free School District* (2d Cir.) 142 F.3d 119, 130.)

9. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*See Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a

school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is "a snapshot, not a retrospective." (*Ibid.*, citing *Fuhrmann v. East Hanover Bd. Of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Id.*)

10. As to Issue One, Student did not provide any evidence to support her contention that District failed to assess Student in all areas of suspected disability including audiology, auditory processing, occupational therapy and vision. Here, Student provided District with a nine page request for assessment of eleven different areas detailing the instruments that should be used by school personnel for the assessment. District responded to the request in writing and provided Student with a comprehensive assessment plan which did not include an audiological examination, auditory processing evaluation or occupational therapy evaluation and a written explanation of its rationale. Mother consented to the assessment plan on February 8, 2010.

11. District's assessment of Student was sufficient to identify all of Student's unique educational needs and to design an educational program to provide a FAPE to Student. District assessed Student in all areas of suspected disability. Specifically, there was no need for District to conduct an audiological assessment of Student because there was no reason to suspect disability in that area and Student has not shown evidence of any unassessed disability in that area. Student passed a hearing screening in August of 2008 and performed in the average range on the TAPS3, an auditory processing measure, administered by school psychologist Del Pozo. Student also performed within the average range on expressive language measures

administered by speech and language pathologist Kao. There were no indications of hearing deficits from either measure.

12. Similarly, District adequately assessed Student in the area of auditory processing and Student has not shown evidence of any unassessed disability in that area. Del Pozo administered a battery of cognitive tests and the TAPS3, a measure which is specifically designed to address auditory processing disorders. From the assessment results, Del Pozo concluded that Student was not afflicted with any processing disorder and was of average to above average cognitive ability. Del Pozo also conducted an evaluation of general motor abilities using standardized measures, observation and parent/teacher interviews. Student performed in the average range in fine motor skills assessment tasks with no indications of deficits in fine motor skills. Del Pozo observed Student's gross motor skills to be adequate. Student's teacher and Mother reported Student to be of above average ability in physical and gross motor tasks. Accordingly, there were no areas of suspected need in fine or gross motor skills that warranted an occupational therapy assessment and Student has failed to show any unassessed disability in those areas. There were no indications in any of the testing or from Mother or teacher comments that Student had a suspected vision deficit of any kind and Student failed to produce any evidence of a vision deficit. Nevertheless, District conducted a vision screening of Student on February 4, 2010 which Student passed. The evidence showed that District's assessment of Student was comprehensive and addressed all areas of suspected disability. Therefore, Student's contention that she was denied a FAPE because the District failed to adequately assess her is meritless. (Factual Findings 1-31 and Legal Conclusions 1-12.)

13. As to Issue Two, the District committed a procedural violation of the IDEA by failing to complete Student's assessment and conduct an IEP meeting for Student within 60 days of receiving the signed assessment plan. The procedural violation did not

result in a denial of FAPE to because it did not result in a deprivation of educational benefit to Student nor did it impede Mother's ability to participate in the IEP process. The completed assessment resulted in a recommendation that Student's speech and language services be increased from 120 minutes per month to 240 minutes per month. The evidence did not show that Student needed any other supports or services except speech and language therapy. The District's January 19, 2010 IEP offer, that Mother did not consent to, had been for Student to receive speech and language therapy for a total of 60 minutes per month. The prior IEP had provided Student with 120 minutes per month of speech and language therapy. The evidence showed that following the January 19, 2010 IEP team meeting and up until the June 1, 2010 IEP meeting, Student received 120 minutes per month of speech and language therapy. Because District did not complete the assessment and IEP meeting within the statutory time frame of 60 days, District did not recommend and Student did not receive the increase from 120 minutes per month to 240 minutes per month of speech and language therapy during the time period of April 9, 2010 to June 1, 2010. The two month delay deprived Student of 240 minutes (4 hours) of speech and language therapy which would have been provided had the assessment and IEP team meeting been timely. However, Student did not present any evidence that the loss of four hours of speech and language therapy over the two month period of time had impeded her access to the general education curriculum or deprived her of a material educational benefit. Student did not present any evidence that District's delay in any way significantly impeded Mother's participation in the IEP decision-making process. (Findings of Fact 1-31 and Legal Conclusions 1-13.)

ISSUE THREE – PARTICIPATION AT JANUARY 19, 2010 IEP MEETING

14. In Issue Three, Student contends that District denied her a FAPE by impeding Mother's ability to participate in the IEP process when it did not fully explore

Student's request for assessment at the January 19, 2010 IEP meeting. District contends that Mother's right to participate in the January 19, 2010 IEP meeting was not impeded and that she fully participated in the IEP meeting.

15. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

16. As set forth in Legal Conclusion 6, and incorporated here by reference, the law provides that in matters alleging procedural violations, a denial of a FAPE may only be shown if the procedural violations impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits.

17. Student's claim that District impeded Mother's participation in the January 19, 2010 IEP meeting is without merit. Mother attended the IEP meeting with her attorney and two advocates. The IEP notes reflect participation, disagreement and discussion by Mother and her representatives in the meeting. Mother made specific comments which were noted and specifically disagreed with recommendations of District members of the IEP team. The evidence showed that District members of the IEP team made note of the assessment request in the IEP notes and later addressed the request in writing. Mother signed an assessment plan drafted by District on February 8,

2010. Had she desired to have further discussion of the assessment plan, a subsequent IEP meeting could have been scheduled with the assessment plan as the scheduled topic of discussion. The evidence further showed that Mother and her three representatives fully participated in the IEP meeting making suggestions for services and service delivery models. The suggestions were considered and recorded in the January 19, 2010 IEP meeting notes. (Findings of Fact 1-31 and Legal Conclusions 1-17.)

ISSUE FOUR – RSP AND SPEECH/LANGUAGE THERAPY

18. Student's final contention is that District denied her a FAPE for the 2009-2010 school year by failing to provide Student with appropriate special education and related services in the areas of resource support and speech/language. District contends that it provided Student a FAPE. District specifically contends that Student did not require RSP support and performed adequately in the general education classroom without such support and that it provided Student with adequate speech and language therapy services based upon her assessed needs.

19. As set forth in Legal Conclusion 9 above and incorporated here by reference, a school district's offer of special education services to a disabled pupil is a FAPE under the IDEA when the offer of educational services and/or placement is designed to meet the student's unique needs, comports with the student's IEP, and is reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment.

20. Student's claim that District failed to provide Student appropriate RSP support and speech and language therapy also fails. Student failed to provide any evidence that in order to receive some educational benefit, her unique needs required RSP services or speech and language services in excess of what District provided to Student. Instead, the evidence clearly shows that Student functioned well in the general education classroom and required only speech and language therapy to access the

general education curriculum and receive an educational benefit. District provided Student with speech and language services commensurate with her assessed need and the recommendations of the speech and language pathologist. As set forth in paragraph 14 above, due to a delay in assessment and an IEP meeting, Student missed approximately 4 hours of speech and language therapy. Student did not establish that the deprivation of the 4 hours of speech and language therapy during the two month period of time resulted in a denial of FAPE. Student failed to present any evidence to support the contention that District denied her a FAPE in any other respect during the 2009-2010 school year (Factual Findings 1-31 and Legal Conclusions 1-20.)

ORDER

All claims for relief are denied.

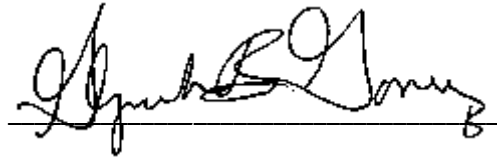
PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. District prevailed on all issues heard and decided.

RIGHT TO APPEAL THIS DECISION

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

DATED: November 2, 2010

A handwritten signature in black ink, appearing to read 'Glynda B. Gomez', is written over a horizontal line.

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings