

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2010050866

v.

ALHAMBRA UNIFIED SCHOOL DISTRICT.

DECISION

This matter was heard before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on July 20, 2010, July 22 - 23, 2010, August 17 - 19, 2010 and September 1, 2010 in Alhambra, California.

Arlene Bell, attorney at law, represented the Student. Student's mother (Mother) was present each day of the hearing. Student was not present.

Cole Dalton, attorney at law, represented the Alhambra Unified School District (District). Gary Gonzales, Assistant Superintendent, was present on July 23, 2010. Mona Neter, Special Education Director (Neter), was present all other days of the hearing.

The Request for Due Process Hearing (RDPH) was filed on May 26, 2010. A joint request for continuance was granted for good cause on June 22, 2010.

ISSUE

1. Did the District deny Student a free appropriate public education (FAPE) from December 11, 2009, through the end of the 2009-2010 school year by:

- (a) failing to provide Student with an appropriate reading program designed to meet his unique needs and

(b) failing to provide Student with an accommodation of turning his homework in late.

2. Does the District's March 2, 2010 and April 23, 2010 individualized education program (IEP) deny Student a FAPE by:

(a) failing to offer Student a peer-reviewed, research-based reading program designed to meet his unique needs;

(b) failing to offer Student with an accommodation to turn in his homework late.

(c) failing to offer individual speech and language therapy after school hours; and

(d) failing to offer an adequate educational placement to meet Student's unique needs.

FACTUAL FINDINGS

BACKGROUND

1. Student is a 16-year-old young man who is eligible for special education under the category of specific learning disability. At the time of hearing, he was a tenth grade student at Alhambra High School (AHS) within the District.

2. Student has been eligible for special education and related services since the age of three when he was determined to be eligible for special education as a child with a speech and language impairment. In 2004, Student's special education eligibility was changed from speech and language impairment to specific learning disability (SLD). Student attended District's William Northrup Elementary School (Northrup) through eighth grade in the 2008-2009 school year. At Northrup, he was placed in a general education class with resource support (RSP) on a pull-out basis and received speech and language therapy. Student began ninth grade in the 2009-2010 school year at AHS.

3. Student's SLD eligibility is based upon his deficits in auditory processing, attention and memory. Those deficits impact the rate at which he learns, his retention of

what he has learned, his language development and reading skills. As part of his disability, Student is slow to process information, often forgets what he has learned and is not able to distinguish between speech and background noise when the background noise and speech are at equal or near equal levels. Student also suffers from asthma and anxiety. His asthma requires medications including Qvar, Singulair, Albuterol and Flonase for symptom control. He also needs steroids several times per year to treat his asthma. Student had approximately 30 asthma and anxiety related absences during the 2009-2010 school year and numerous visits to the school nurse.

APRIL 29, 2009 IEP MEETING

4. At Student's April 29, 2009 IEP meeting, the Northrup IEP team designed an IEP for Student's final months in eighth grade and his entry into ninth grade at AHS. For ninth grade, Student was offered 110 minutes per day of collaborative RSP support¹ in general education English/language arts and math classes. The IEP also included a series of modifications and accommodations which included that Student would "be able to turn in assignments with a grace period of no more than three days after the due date." The IEP provided that the grace period was to commence when Mother was notified of the missing assignments.

5. The IEP team wrote goals in reading, writing and math. The reading goals included two goals related to reading comprehension and one goal for reading vocabulary and concept development. Two writing goals were established for writing

¹ The RSP support was given in a collaborative class. For the 2009-2010 school year, Student's collaborative classes were taught by a general education teacher with the assistance of a special education aide under the supervision of the special education department head.

organization/focus and punctuation. Four math goals were set in the areas of number sense, algebra functions, algebra equations/problems and mathematical reasoning. Mother agreed to eligibility, goals and services. Mother disagreed with the proposed placement because she believed that pull-out RSP services were necessary in light of the amount of support Student needed to be successful in elementary school and the increase in curriculum difficulty that would accompany Student's transition to high school.

ROBERT ROME'S ASSESSMENT

6. On June 15, 2009, Robert Rome, Ph.D. (Rome), a licensed clinical and educational psychologist, performed an independent educational evaluation (IEE) of Student at Mother's request. Rome was tasked with determining Student's then-current level of function and making recommendations to address any identified areas of need. Rome administered a battery of assessments including the Wechsler Intelligence Scale for Children-Fourth Edition; Woodcock-Johnson, Third Edition; Test of Achievement, Test of Adolescent and Adult Language, Fourth Edition; Wepman Auditory Discrimination Test; Bender-Visual-Motor Gestalt Test, Koppitz Scoring, Second Edition; and the Beck Youth Inventories, Second Edition.

7. Based upon test results, parent interview, and a review of school records, Rome opined that Student was of average intelligence with a full scale intelligence quotient (FSIQ) score of 100. Rome's testing revealed Student to be near grade level in mathematics, performing in the low average range, and four years behind in language arts, performing in the borderline range. Rome opined that Student demonstrated auditory-perceptual and processing problems that caused Student to confuse certain sounds. In addition, in the area of speech articulation, Student substituted b/p and g/k which impacted the intelligibility of his speech. Rome also noted vowel errors and consonant substitutions which affected Student's speech. Rome found that Student had

deficits in organization, and sequencing of routine skills both at home and at school. Rome noted that Student's mother and some teachers had described distractibility and hyperactivity. Rome attributed the attention and hyperactivity to the various asthma medications taken by Student and the effects of Student's asthma. Rome diagnosed Student with mixed receptive-expressive language disorder and a phonological disorder.

8. Rome opined that Student's chief needs are his language deficits and his asthma and allergy medical problems. He considered Student's hyperactivity and attention issues to be related to the medical condition, medication side effects, and frustrations associated with the language deficits. Rome recommended that Student receive speech and language therapy, individual or small group support for academics and skill building and special classes for academics whether through RSP pull-out or a non-public school. He also noted that Student would need a wide variety of accommodations including preferential seating, smaller classes, clarification of both class work and homework assignments, a system for teacher-parent communication, and modified grading in certain classes. Rome suggested counseling in school to help Student learn to redirect himself and remain focused and involved in the class lesson. Mother provided a copy of Rome's IEE report to District at some point during 2009.

FIRST REQUEST FOR DUE PROCESS (RDPH)

9. On June 19, 2009, Mother, on behalf of Student, filed an RDPH alleging denial of FAPE for the 2007-2008, 2008-2009 and 2009-2010 school years which was assigned OAH case number 2009060976 (OAH case number 2009060976). The parties reached an interim settlement on October 19, 2009, which provided, in part, that an independent speech and language evaluation would be funded by District. The independent speech and language evaluation was conducted by Susan Hollar (Hollar).

2009-2010 PLACEMENT

10. For the 2009-2010 school year, Student was placed in collaborative math and language arts classes. The collaborative classes included a general education teacher and a special education aide. Student's class schedule consisted of an Algebra 1A class with general education teacher Gerald Patinelli (Patinelli) assisted by special education aide Christina Diaz, an English intensive class and language arts for two class periods taught by Mary Cannon (Cannon) with the assistance of a special education aide, an elective computer class taught by general education teacher Eleanor Dominguez (Dominguez), a Guitar class with Mark Toulson, and physical education class with Gary Neeley.

DECEMBER 8, 2009 IEP MEETING

11. An IEP team meeting was held on December 8, 2009. The IEP team members were Mother, Student's attorney Arlene Bell, special education director Neter, District's Attorney C.L. Dalton, language arts teacher Cannon, assistant principal J. Cisneros, special education teacher/case carrier Seth Jaewitz (Jaewitz), school psychologist Kathleen Wright, District speech and language pathologist Portia Bolden (Bolden), and independent speech and language pathologist Hollar. At the meeting, Hollar presented her assessment report and recommendations. Progress notes from Student's outside speech and language therapy provider Debra Kunin Rome (Kunin Rome)² were also provided to the IEP team.

² Debra Kunin Rome is the spouse of Dr. Robert Rome.

HOLLAR'S ASSESSMENT REPORT

12. Hollar conducted her assessment of Student in December of 2009. She evaluated Student using the Comprehensive Assessment of Spoken Language (CASL), Receptive One Word Vocabulary Test, Expressive One Word Vocabulary Test, SCAN-Test of Auditory Processing, selected tests of the Comprehensive Test of Phonological Processing (CTOPP), Strong Narrative Assessment Procedure, Language Sample, and a parent Interview. Hollar found Student to display a severe Central Auditory Processing Disorder (CAPD). She found deficits in Student's overall fluency and word generation, grammar elements, and narrative skills. Hollar found those deficits to affect Student's ability to participate in a conversation. Hollar reported that Student was able to produce single sounds in isolation with limited accuracy, but that his intelligibility deteriorated as phrases and sentences became more sophisticated. She noted that he was not able to differentiate between similar sounds or track the sound order. Hollar also found that Student's voice was flat and monotone.

13. Hollar recommended that Student receive speech and language therapy focusing on speech intelligibility, auditory processing, narrative skills, conversation strategies and using language to problem solve. Hollar opined that Student's auditory processing skills, language organization and formulation deficits would severely impact his ability to function within a general education classroom setting. She diagnosed Student with Speech and Language Disorder, Auditory Processing Disorder, Dysphasia (difficulty with word finding), and Language Formulation Deficit. In her report, Hollar recommended that Student receive a minimum of two hours of speech and language intervention per week and receive 15 minutes of auditory processing and speech production home work assignments each day. Hollar also recommended that Student receive an audiological evaluation.

14. Based upon the reports and the IEP team discussion, District speech and language pathologist Bolden presented draft speech and language goals in the areas of phonemic awareness and auditory comprehension at the December 8, 2009 IEP meeting. The IEP team also added 55 minutes per week of individual speech and language therapy to Student's educational program. Mother did not agree with the goals at the IEP meeting because she wanted an opportunity to review them with outside speech and language pathologist Kunin Rome.

READ 180 READING PROGRAM

15. During the December 8, 2009 IEP meeting, the team also discussed Student's academic progress since starting ninth grade at AHS. At the time of the meeting, Student was passing all of his classes, but was receiving a "D" in computer literacy. Cannon reviewed Student's progress in his language arts class. Cannon specifically reviewed and outlined the format, structure, literature and Read 180 curriculum used in the classroom. She also reviewed the reading fluency, comprehension and writing strategies used with the Read 180 program.

16. Read 180 is a research-based reading curriculum produced by Scholastic Incorporated (Scholastic). The Read 180 program has been in use in California for approximately 10 years and has been updated and revised over those 10 years. The core components of the Read 180 program are whole group instruction, small group instruction, computer/audio interaction and independent reading. Cannon and other AHS teachers that use Read 180 were trained to use Read 180 by District reading specialist Lynn Wilson and instructors from Scholastic.

17. Student's reading instruction with Read 180 consisted of rotations through small group instruction with seven students, independent reading, computer instruction, and whole group instruction. Student either watched a three-to-four minute video or viewed pictures as background to the reading material for each unit. District reading

specialist Lynn Wilson and Cannon both testified that the Read 180 program, as used at AHS, had a tight predictable structure with rotations occurring each 15 to 20 minutes. Each lesson/unit had four repetitions of each concept. The teacher and the aide monitored Student on the computers and listened to his reading. The computerized instruction was set at Student's Lexile³ level and customized to his reading level. The computer portion of the program evaluated Student's reading aloud and provided reading comprehension testing. Read 180 incorporates an assessment at the end of each unit and has three overall diagnostic assessments per year which are completed on the computer. Read 180 is a structured program which can be tailored to meet individual student needs. District worked with Scholastic and was authorized to modify the program to fit a 55-minute class period while maintaining program fidelity and content.

18. District utilizes a three tier reading program in which all students are placed in one of the three tiers based upon their Lexile scores using the Scholastic Read 180 program, classroom grades and state testing scores. In the first tier are students who do not need intensive reading intervention. In the second tier are struggling readers who need intensive reading intervention. In the third tier are students with the most severe reading deficiencies in need of a basic reading program and the most intensive interventions. For ninth grade, Student was placed in the second tier based upon his Lexile scores, grades and state testing scores. The Read 180 program is the reading curriculum used for tier-two students in ninth grade.

³ This is a proprietary term which indicates a student's score on Scholastic Reading Inventory (SRI). The Lexile is a numeric measure which indicates the level of reading comprehension and correlates to levels of text and curriculum materials.

DECEMBER 10, 2009 SETTLEMENT

19. On December 10, 2009, District and Student reached a full settlement of OAH case number 2009060976. In relevant part, the settlement provided that Student would accept the proposed placement and that Student would receive speech and language therapy for 30 minutes per week from a District speech and language pathologist during school hours and compensatory speech and language services to be provided outside of school hours. The compensatory services were provided by outside speech and language pathologist Kunin Rome. The settlement agreement also provided that all claims which were raised or could have been raised as of December 10, 2009, were released.

MARCH 22, 2010 AND APRIL 23, 2010 IEP

20. Student's annual IEP was held on March 22, 2010, and April 23, 2010. The IEP team reviewed Student's then present levels of performance, progress on goals, and an assessment by District audiologist William Ritchie (Ritchie). Parent reported on Student's progress with speech and language therapy provided by outside speech and language pathologist Kunin Rome.

LANGUAGE ARTS

21. Cannon reported to the IEP team that Student had met his reading goals from his prior IEP. The average progress in the Read 180 curriculum is 50 to 100 Lexile points per year. Student gained 33 Lexile points during the 2009-2010 school year which equated to six months of grade level progress. While Student's progress was less than the average progress with Read 180, Cannon believed it was significant progress for Student. Four new goals in reading comprehension goals were written. The goals called for Student to: draw conclusions from core curriculum text; back his conclusion with supporting details; assess the accuracy and appropriateness of an author's evidence to

support claims; answer inferential questions; rephrase the main ideas and sequencing of events in core curriculum. Student made progress in writing, but did not meet his goals in writing. Prior IEP goals targeting organization and focus in capitalization, composition and punctuation were continued for the next year.

22. Cannon implemented the accommodations and modifications contained in Student's IEPs. Student was seated in the center of the class in the second row. She redirected him as needed, checked for his understanding and wrote words on the board. Student was also given a three-day grace period to complete missing homework assignments. Cannon described the courses as highly visual with computers and pictures. Student's ninth grade English classes were introductory classes. Cannon read every book to the class. In ninth grade, the students read *Tangerine*, *Fallen Angels*, selections of *The Odyssey*, *Flowers for Algernon*, *Romeo and Juliet* and *To Kill a Mockingbird*. When tests were given, she read them aloud to the class a few days before the actual examination.

23. Student made progress in Cannon's classes. However, Cannon considered Student's 30 absences a significant hindrance to his progress. She made modifications to Student's assignments and to help him obtain the information needed to catch up with the class and understand current lessons. Cannon thought Student had made good progress when his absences were considered. She recommended that Student receive individual tutoring to help him catch up with his work. According to Cannon, Student only needed individual attention when he had been absent. She prepared a packet of instruction materials for Student each time he was absent. She spoke to Mother and Student's case carrier about missing assignments. The assignments were either sent directly to Student's mother or given to the case carrier. She also provided mother with copies of the Read 180 reports and all performance indicators that could be printed from Read 180 throughout the school year. Based upon Student's grades, Lexile scores,

and state testing scores, Cannon recommended to the IEP team that Student continue with a tier-two intervention in 10th grade. The new Stretch reading program is research based extension of the Read 180 program, but does not contain a computer component.

MATH

24. Patinelli was Student's Algebra 1A teacher in ninth grade. Patinelli earned a bachelor's degree from California State University at Los Angeles in 1969 and a Master's degree in Education from the University of Redlands in 1974. Patinelli has a clear single subject math teaching credential. Patinelli reported to the IEP team that Student performed well in the Algebra IA class and met the two math goals addressed by Algebra 1A curriculum for the school year. Student met the math goal of solving two-step linear equations and inequalities. The two unmet math goals concerned more advanced Algebra concepts which would be addressed in Algebra 1B in the tenth grade.⁴ Student was allowed to make up the work he missed during his absences and was given as much time as needed. In class, Student had preferential seating. Student also had access to the special education aide, Ms. Diaz, for additional assistance during the class. Patinelli observed Student to be on task most of the time. Patinelli and Diaz checked with Student to ensure that he understood the material and assignments on a regular basis. Patinelli used an overhead screen to write and draw pictures during the class. Student was allowed to use grid paper and take his tests with open notes. The class notes were written by the teacher on the overhead projector to be copied by all of the students. Patinelli and Diaz checked to make sure Student had written the notes. The

⁴ Algebra 1A and 1B cover the same material in two years as the Algebra 1 course covers in one year.

class did not have long term assignments and had some small amount of homework. Student was in the top 20% of the class. At Patinelli's suggestion, the unmet math goals were continued in the new IEP. Two additional goals addressing fractions and decimals were also added.

COMPUTERS

25. Dominguez, Student's computer literacy teacher, also attended the IEP meetings. Dominguez earned a Bachelor of Science degree from California State University at Los Angeles in business education in 1979 and a master of arts in secondary education in 1991. She holds a Ryan single subject credential in business education and has 30 years of experience as a business education teacher at AHS. Dominguez reported to the IEP team that Student was struggling in the fast-paced computer class. At the time of the IEP meetings, he had a "D" in the class and was missing several assignments. Dominguez advised the IEP team that Student's absences had a significant impact on his grade and performance in the class.

AUDIOLOGIST ASSESSMENT

26. District audiologist William Ritchie (Ritchie) reported his assessment results to the IEP team on April 23, 2010. Ritchie earned a bachelor of arts in speech pathology and audiology from California State University Los Angeles in 1975. He also received a master of arts in speech pathology and audiology in 1975. Ritchie has a special education and speech, language and hearing therapy credential for Kindergarten through 12th grade. He also has a speech, language and hearing therapy credential for adults and has been a licensed California audiologist since 1979. Ritchie was a speech and language pathologist for the Los Angeles Unified School District (LAUSD) for one year in 1974. He has been an audiologist with District for 36 years. Ritchie provides assessment and support for the District special day classes (SDC) and the West San

Gabriel Special Education Local Plan Area (SELPA) Deaf Hard of Hearing (DHH) program. Ritchie conducted an assessment of Student to determine his hearing level and needs.

27. Ritchie administered a hearing test to Student. He determined that Student's overall hearing was within normal limits. He also conducted an assessment for Central Auditory Processing Disorder (CAPD), the Multiple Auditory Processing Assessment (MAPA) and Test of Auditory Processing Skills (TAPS). Based upon his testing and a review of all records including a report prepared by speech and language pathologist Kunin Rome and psychologist Rome, Ritchie opined that Student had mild CAPD. He classified the CAPD as mild not because it has a mild impact on Student, but because it was secondary to what Ritchie considered to be Student's main issues. Ritchie considered Student's poor memory and hearing problems with noise to signal ratio to be his main issues and the chief reasons for his language difficulties. Ritchie opined that Student could access the general education curriculum and be successful in the collaborative classes offered for the 2010-2011 school year with preferential seating and modifications.

28. Ritchie explained that Student can hear the sounds of speech adequately as long as the decibel level of background noise does not rise to an equal level with the speech. As the background noise decibel level rises, Student's ability to clearly hear the sounds of speech decreases. When the decibel level of background noise equals the decibel level of speech, Student cannot distinguish speech sounds from each other and cannot distinguish speech from background noises. According to Ritchie, Student had difficulty coping with competing auditory messages. Ritchie opined that the combination of memory issues, slow auditory processing, and signal-to-noise ratio difficulties have resulted in Student's language deficits and impeded his ability to perform to his full potential as a student of average cognitive ability.

29. Ritchie recommended that Student continue speech and language therapy using Earobics-adult version and work on distinguishing sounds and listening skills. He also opined that a phonetic approach to reading would be difficult for Student. Ritchie opined that Student needed multimodal materials and teaching strategies. Ritchie recommended that Student be given preferential seating, visual aides, copies of notes from other students and teachers, and copies of information written on the board. He also noted that Student would need assistance learning to take notes. Ritchie recommended that teachers check Student's comprehension of instructions and materials at least two or three times per class period. Ritchie opined that it is laborious for someone with CAPD to learn to process information. For someone like Student, with memory problems, the information learned at the beginning of a class session may be forgotten by the time Student processes the remainder of the class session. For those reasons, Ritchie felt it was essential to provide Student with notes, outlines, visual aides and other tools to help him remember and retrieve information.

CONSULTATION

30. Jaewitz was Student's special education case carrier and was present at the March and April IEP meetings. He worked for District from March of 2009, to June of 2010. He was as an RSP special education teacher and a collaborative teacher in science classes. At the time, he had a preliminary level one clear special education mild to moderate special education credential. Jaewitz earned an associate degree in Liberal Studies from Moorpark Community College and a bachelor's degree from California State University at Los Angeles with a major in urban studies and a minor in special education. He is enrolled in a teaching credential program at California State University at Los Angeles. Jaewitz consulted with Student for 15 minutes per session twice a week from September 2009, through March 2010, as part of his IEP. His consultation included checking with Student and his teachers about the status of missing assignments and

ensuring that modifications and accommodations were in place pursuant to Student's IEP. During the first few weeks of the 2009-2010 school year, he advised all of Student's teachers of the modifications and accommodations in the IEP including the three-day grace period for late homework.

31. Jaewitz advised the IEP team that Student did not like being pulled out of class for the consultations. Student was also being pulled out of his language arts class for an entire period once a week for speech and language therapy with Bolden. Jaewitz advised the team that Student was extremely concerned about missing class and falling behind in class. The IEP team members agreed that Student should spend as much time as possible in class and for that reason, eliminated the consultations at the March IEP meeting.

IEP TEAM DISCUSSION

32. The IEP team agreed that Student had educational needs in areas of organization and self-help. The IEP team added a self-help goal that provided that Student would make an entry of his homework and class work assignment in a computerized personal data assistant (PDA) to be supplied by Mother or an agenda each day with 95% accuracy in five out of six periods per day over a 10-day period given adult prompting. District members of the IEP team preferred that Student use an agenda to record his assignments, but Mother insisted that Student be permitted to use a PDA. This goal was written in conjunction with an accommodation that Student would be permitted to use a PDA or agenda to record his assignments and that he be given additional time, up to one week, as agreed upon by Student and his teachers to complete assignments. District members of the IEP team did not agree to Mother's request to continue the three-day grace period for missing assignments from the prior IEP. The IEP team reasoned that use of a PDA or agenda for assignments with adult

prompts, would foster organization, self-help and independence while permitting Parent to monitor the missing assignments at the same time.

33. Kunin Rome's progress notes and assessment results were provided to the IEP team by Mother. Kunin Rome provided speech and language therapy to Student twice a week for the 2009-2010 school year pursuant to the December 10, 2009 settlement agreement. Kunin Rome found auditory processing and auditory discrimination issues to be at the root of Student's reading and language issues. She noted that the problems affected his expressive and receptive language and reading skills. Kunin Rome worked with Student to improve his phonation, articulation, respiration, fluency, and auditory processing. With respect to auditory processing, she worked with Student to increase his ability to discriminate between sounds and to sequence sounds. Student had difficulty remembering strategies that he learned in speech and language therapy because of his memory problems. Kunin Rome noted Student's deficits were not apparent in spontaneous speech. However, Student's deficits were apparent in structured reading tasks which required him to read and recognize words written by someone else. In spontaneous conversation, Student was able to compensate for his language deficits.

34. Based upon the IEP team discussions, District's speech and language pathologist Bolden presented draft speech and language goals to address answering "WH" questions by understanding and using imagery, improving Student's ability to understand and recall information, identification and production of voiced and voiceless sounds, and increasing voice quality by decreasing monotone and improving phonation, articulation and respiration techniques.

35. Although District does have separate RSP and special day classes (SDC), the IEP team did not recommend a SDC or RSP class for Student because Student was able to access the general education curriculum in a general education classroom with

RSP support and also received a social benefit from participating with non-disabled peers in class and extracurricular activities. The District members of the IEP team felt that collaborative classes for core academic courses would constitute the least restrictive environment (LRE) for Student. For the 2010-2011 school year, the offer of FAPE for Student was four collaborative academic core classes to include language arts, math, science and social studies. Each of the collaborative classes was to have both a general education teacher as the lead teacher and a special education teacher to assist students. The special education teacher would be in the class at least 30 minutes per 55 minute period to assist all of the students in the classroom. The offer also included group speech and language therapy for 110 minutes per week,⁵ during the school day on a pull-out basis provided by a District speech and language pathologist.

EXPERT TESTIMONY

District's Expert

36. District offered the expert testimony of District's speech and language pathologist Tamara Baganz (Baganz) to support its contention that Student did not require individual speech and language therapy outside of the school day to receive a FAPE. Baganz obtained a master's degree in communications disorders from California State University at Los Angeles and holds a clinical rehabilitation credential. Baganz has a certificate of clinical competence from the American Speech and Hearing Association (ASHA). Baganz provided speech and language therapy to Student for approximately six years beginning in the second grade and extending to eighth grade at Northrup. She

⁵ The IEP states 110 minutes per week, but does not specify frequency of sessions. However, the parties stipulated at hearing that the frequency and amount of speech and language therapy were not at issue.

did not provide therapy to Student in the 2009-2010 school year and did not have personal knowledge of his performance during the 2009-2010 school year. Baganz had worked with Student on articulation and phonemic awareness skills. Baganz did not work with Student on reading skills or oral reading fluency. In her experience with Student, he was anxious and sensitive about his reading problems and seemed to have difficulty remembering things.

37. Baganz opined that individual services can be beneficial to someone with Student's profile but are not always as beneficial as group therapy. She found Student to be resistant to individual speech and language therapy. Baganz opined that group therapy would provide Student with a chance to work on intelligibility with peers using spontaneous discussion. In group sessions, a therapist would be able to monitor and evaluate the quality of his intelligibility. She felt that Student benefited from the communication practice provided by group sessions. Baganz's professional recommendation was to terminate speech and language therapy. Although Student still had some intelligibility issues, she believed that he was able to access the general education curriculum without speech and language therapy.

Student's Experts

38. Student offered the testimony of expert witnesses psychologist Rome and teacher Martha Soto (Soto) to support its contention that District denied Student a FAPE for the 2009-2010 and 2010-2011 school years by failing to provide him with an appropriate reading program to address his unique needs. Student's expert witness, Soto is a general education high school English teacher with LAUSD. Soto has been a teacher for seven years. She used the Read 180 program one year at LAUSD. In LAUSD's model, the Read 180 class was 90 minutes. Soto opined that the students were bored with the computer program and overall did not progress in the program. She did not believe there was sufficient time for a teacher to listen to students reading, monitor their

computer activity, and simultaneously teach a small group session in a 90-minute session. She felt that the materials were boring and students were often off-task, attempting to do tasks other than Read 180 on the computers due to boredom with the repetition. Soto would not recommend Read 180 as curriculum for students because she believed the repetitiveness was extreme and the program was not intellectually stimulating.

39. While Soto was knowledgeable about Read 180 and the limits of the program as implemented at LAUSD, she had no knowledge of District's use of Read 180 and no experience working with students with SLD or on IEPs in the Read 180 program. Also, Soto was not familiar with Stretch, a new extension of Read 180 that was proposed as curriculum for Student for the 2010-2011 school year. She had met Student twice and had no knowledge of his disability or the deficits in his reading abilities. Soto is a friend of Student's aunt. She testified credibly and candidly about her experience and beliefs about Read 180.

40. Student's expert psychologist Rome observed the AHS Read 180 program and observed various implementations of Read 180 in other districts. Rome opined that the computer portion of the Read 180 program reinforced Student's poor reading skills because the computer counted the correct number of words read regardless of the number of pauses or the poor fluency along the way. Rome opined that the small group portion of the program was beneficial to Student. Rome further opined that Student needed a very repetitive reading program to help him build his skills and to work on his reading comprehension deficits. He described Student as being slow to process, but "with enough time he gets it." He observed the class taught by Cannon. Rome opined that she was a very good teacher and very adept at anticipating Student's needs. Rome opined that Student needed educational therapy and speech and language therapy to build foundational language arts skills, which would be important to most academic

areas. He did not believe that the Read 180 program alone would provide the foundational skills Student needed.

FROSTIG SCHOOL

41. The Frostig School (Frostig) is a certified non-public school (NPS). At hearing, Toby Shaw (Shaw), the principal of Frostig, described Frostig's programs. Shaw has a bachelor's degree in liberal studies and a master's degree in special education. She had a special education mild to moderate teaching credential, an administrative credential, and an assistive technology certification. She has been with Frostig for 19 years. Frostig has up to 120 students in 10 classes in from grades one to 12. Students are accepted into Frostig after an application, review of records, and interview. Typically, the students are either learning-disabled or have attention problems. Frostig adheres to the state educational standards frame work. Frostig focuses on teaching learning disabled students compensation strategies and incorporates technology into many aspects of its program for learning-disabled students.

42. Accommodations for learning disabilities are embedded into the curriculum. Modified textbooks, modified curriculum, technology and multimodal teaching methods are used in each class. For students with CAPD and slow processing, key concepts are covered without expansion. Students use agenda books, PDAs or planners and are taught organizational strategies. The classes are multi-grade. Sometimes ninth to twelfth graders are grouped together. Shaw emphasized that good attendance is necessary to progress. Frostig's policy is that grades are impacted after 10 absences. Frostig is not a college preparatory program. However, students do matriculate to community colleges.

LEGAL CONCLUSIONS

1. In a special education administrative due process hearing, the party seeking relief has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student has the burden of proof.

2. In Issue one, Student contends that he was denied a FAPE for the 2009-2010 school year from December 11, 2009, through the end of the school year because the Read 180 reading program was not an appropriate reading program designed to meet his unique needs (Issue 1.(a.)). Student further contends that he was denied a FAPE because he was not provided with an accommodation of turning his homework in late during the same time period. (Issue 1.(b.)) District contends that the Read 180 program was appropriate for Student and did meet his needs. District also contends that Student's late homework was accepted by his teachers as an accommodation.

3. Student contends in Issue two that the District's IEP developed over two meetings on March 2, 2010, and April 23, 2010, denied him a FAPE in four areas. Student contends that District's "Stretch" reading program was not based upon peer-reviewed research and was not appropriate to meet Student's unique need (Issue 2.(a.)). Student also contends that District failed to offer him with an accommodation to turn his homework in late (Issue 2.(b.)) Student also contends that Student requires individual speech and language therapy outside of school hours because he needs to remain in class to the maximum extent possible (Issue 2.(c.)). Finally, Student contends that he requires a placement in an NPS in order to receive a FAPE. District contends that it's IEP offered Student a FAPE (Issue 2.(d.)). District contends that its "Stretch" reading program was research based and appropriate for Student. District also contends that the IEP offered an accommodation to allow Student to turn his homework in late. District further contends that group speech and language therapy offered during the school day

by a District speech and language pathologist is appropriate for Student's needs. Finally, District contends that its offer of placement in collaborative classes on a comprehensive high school campus is appropriate and the least restrictive environment for Student.

4. 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).)

5. 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.)

6. A student derives benefit under *Rowley* when he improves in some areas even though he fails to improve in others. (*See, e.g., Fort Zumwalt Sch. Dist. v. Clynes*

(8th Cir. 1997) 119 F.3d 607, 613; *Carlisle Area School v. Scott P.*, 62 F.3d 520, 530.) He may derive benefit while passing in four courses and flunking in two. (*Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* (S.D.Tex. 1995) 931 F.Supp. 474, 481.) A showing of progress does not require that a "D" student become a "C" student and thus rise in relation to his peers. Progress may be found even when a student's scores remain severely depressed in terms of percentile ranking and age equivalence, as long as some progress toward some goals can be shown. (*Coale v. Delaware Dept. of Educ.* (D.Del. 2001) 162 F.Supp.2d 316, 328.) 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. 1998) 142 F.3d 119, 130.)

7. 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.*)

8. In general, when developing an IEP, the IEP team must consider: the strengths of the child; the concerns of the parents for enhancing the education of their

child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).) If, after considering the above factors, the IEP team determines that to provide a FAPE a child needs a particular device, service, intervention, accommodation or program modification, in order to make progress on annual goals, make progress in the general education curriculum or be educated with other students, the program modifications must be listed in the child's IEP. (Ed. Code, §§ 56341.1, subd. (c) & 56345, subd.(a)(4)

9. The IEP must include a written statement of present levels of academic achievement and functional performance, a statement of the manner in which the disability affects involvement and progress in the general education curriculum, and a statement of measurable annual goals, related services, supplementary aids and services, program modifications or supports that will be provided to enable the pupil to advance appropriately toward attaining the annual goals. (20 U.S.C. §1414(d); Ed. Code, § 56345.) An IEP must also include a statement of the special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable, to be provided to the child. (20 U.S.C. §1414(d)(1)(A)(IV).)

10. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); *see also W.G. v. Board of Trustees of Target Range School District No. 23 (Target Range)* (9th Cir. 1992) 960 F.2d 1479, 1484.) Procedural errors that lead to a deprivation of educational benefits, such as failure to have the proper composition of the IEP team during the IEP process, are analyzed by determining whether: 1) a procedural violation occurred and 2) whether the procedural violation

resulted in a deprivation of educational benefits to the student. (*M.L., et al., v. Federal Way School District* (9th Cir. 2004) 394 F.3d 634, 653.)

11. *Rowley* established that as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 209.) 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. v. Warwick Sch. Comm.*, 361 F.3d 80, 84 (*citing Roland M.*, 910 F.2d 983 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 loathe 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).)

12 Federal and state law requires school districts to provide a program in the least restrictive environment (LRE) to each special education student. (Ed. Code, §56031; 34 C.F.R. § 300.114 (2006).) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when 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)(i)(ii)(2006).)

13. The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.) If it is determined that a

child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (1989) 874 F.2d 1036, 1050.)

14. In *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402, the Ninth Circuit held that the determination of whether a particular placement is the "least restrictive environment" or a particular child involves an analysis of four factors, including (1) the education benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. However, the Supreme Court has noted that IDEA's use of the word "appropriate" reflects congressional recognition "that some settings simply are not suitable environments for the participation of some handicapped children." (*Rowley, supra*, 458 U.S. at p. 197.)

ISSUE 1(A) DISTRICT'S READ 180 READING PROGRAM WAS APPROPRIATE FOR STUDENT.

15. Student's first contention that District failed to provide him with an appropriate reading program to meet his unique needs is without merit. District's Read 180 reading program was a well documented and researched reading program. The program provided multimodal reading instruction supported by an experienced, well-trained general education teacher and a special education aide. The Read 180 program provided the repetition that Student needed and instruction tailored to Student's reading level. Student's experts Soto and Rome gave their opinions about what they saw as the weaknesses of the Read 180 program. Those weaknesses were primarily in the

computer component of the program. Cannon credibly testified to Student's progress in the Read 180 program and the impact of his absences on his classroom performance. Student made progress in the Read 180 program gaining 33 Lexile points or the equivalent of six months of progress in reading over the 2009-2010 school year and met his reading goals. On balance, the testimony of Cannon, a teacher with 19 years of experience and direct experience teaching Student with Read 180 and Lynn Wilson, a reading specialist with extensive background and expertise in reading and curriculum development was more persuasive than that of Soto and Rome on the efficacy of the District's use of Read 180 with Student.

16. Student failed to prove that the reading program was inadequate to meet his needs. Here the Read 180 program addressed Student's unique needs in the area of reading and Student made measurable progress with the Read 180 reading curriculum. (Findings of Fact 1- 42 and Legal Conclusions 1-16.)

ISSUE 1(B) STUDENT WAS PROVIDED WITH AN ACCOMMODATION TO TURN HIS HOMEWORK IN LATE.

17. With respect to his second contention, Student failed to meet his burden of proof to establish that District denied him a FAPE from December 11, 2009, through the end of the 2009-2010 school year by failing to provide him with an accommodation to turn his homework in late. The evidence showed that Student's case carrier Jaewitz advised all of his teachers of the accommodation during the first few weeks of the 2009-2010 school year and that Student's teachers Cannon, Patinelli and Dominguez allowed Student to turn his homework in late. Accordingly, Student was not denied a FAPE on this basis for the 2009-2010 school year. (Findings of Fact 1-42 and Legal Conclusions 1-17.)

ISSUE 2(A) DISTRICT OFFERED STUDENT AN APPROPRIATE READING PROGRAM FOR THE 2010-2011 SCHOOL YEAR.

18. Student has also failed to establish by a preponderance of the evidence that District's Stretch reading program was not peer-reviewed and did not meet his unique needs and that District therefore denied him a FAPE. As set forth above, the Read 180 program was appropriate for Student and he made progress using the Read 180 curriculum. The Stretch reading program is a research based extension of the Read 180 program. It uses repetition and small group instruction to teach reading skills. Student's expert Robert Rome opined that the computer component of the Read 180 program reinforced bad reading habits, but opined that the small group instruction and repetition were beneficial to Student. The Stretch program does not have the computer component that Student's experts criticized, but continues to provide the repetition and small group instruction that Rome found beneficial. Federal and state law do not require that peer-reviewed reading programs be used in every instance. The IDEA only requires peer-review to the extent practicable and leaves decisions regarding methodology of instruction to the schools. Student has not shown that there is a peer-reviewed reading program appropriate for Student's needs or that the Stretch reading program does not meet his needs. Here, District has offered a research-based reading program that can be tailored to Student's reading level and is appropriate for his needs, by providing repetition and small group instruction, as demonstrated by his success in the more basic Read 180 program in the 2009-2010 school year. (Findings of Fact 1-42 and Legal Conclusions 1-18.)

ISSUE 2(B) DISTRICT OFFERED AN APPROPRIATE ACCOMMODATION FOR LATE ASSIGNMENTS

19. Student's contention that District denied him a FAPE when it refused to offer an accommodation of Student turning assignments in late is without merit.

Specifically, Parent had requested that the accommodation of Student being permitted to turn his homework within three days of notification to his Parent that homework was missing be continued from the prior IEP. Student did not establish that this accommodation was necessary for him to receive a FAPE. District offered an accommodation of Student using a PDA or agenda to record his assignments and that he be given additional time up to a week, as agreed upon by Student and his teachers, to complete assignments. Because organization and self-help were determined to be among Student's educational needs, the IEP team also offered a self-help goal for Student to make entries in his PDA or agenda every day with adult prompts. The District members of the IEP team reasoned that Student needed to develop independence and organizational skills. The use of a PDA or agenda would provide Mother with an opportunity to monitor Student's assignments and would give Student more tools and strategies to develop organization, self-help, and independence skills. The accommodation and goal offered by District met Student's educational needs, provided access to the general education curriculum and provided Parent with a method of monitoring Student's homework assignments. The proposed accommodation also contemplated extra time up to a full week for Student to complete homework assignments to the extent agreed upon with his teachers. (Findings of Fact 1- 42 and Legal Conclusions 1-19.)

ISSUE 2(C) DISTRICT'S OFFER OF SPEECH AND LANGUAGE THERAPY DURING THE SCHOOL DAY DID NOT OFFER STUDENT A FAPE.

20. District offered Student 110 minutes of speech and language therapy in a small group during the school day. Student's contention that he requires speech and language therapy outside of the regular school day to receive a FAPE has merit. Student bases his contention on the manifestations of his learning disability. Specifically, Student has difficulty hearing information in background noise, is slow to process information

and often forgets what he has learned. He needs substantial repetition and must pay close attention to instruction. He also struggles with attention issues and the effects of asthma medication on his concentration. In March of 2010, the IEP team agreed that Student needed to remain in the classroom as much as possible. Under these circumstances, pulling Student from class for 110 minutes per week of instruction to receive group speech and language therapy impedes Student's access to the general education curriculum and his ability to follow the instruction. It is clear from the IEP team discussions and the testimony of Cannon, Dominguez, Patinelli, Jaewitz, Rome, and Ritchie that Student needs to be in class as much as possible and that he needs speech and language therapy. The evidence is also clear that Student has asthma and anxiety which will continue to require his periodic absences from class. These anticipated absences and the manifestations of his disabilities will present enough of a challenge to Student's ability to keep up with the curriculum without further disruption. Accordingly, Student has shown by a preponderance of the evidence that to receive a FAPE he must be provided with speech and language therapy outside of the regular school day. (Findings of Fact 1-42 and Legal Conclusions 1-20.)

21. However, Student failed to establish by a preponderance of the evidence that he required individual speech and language therapy to obtain a FAPE. Student's speech and language goals call for him to: (1) answer "WH" questions by understanding and using imagery and improving his ability to understand and recall information, and (2) to identify and produce voiced and voiceless sounds including increasing voice quality, decreasing monotone, improving phonation, articulation and respiration technique. Student failed to show that implementation of these goals required individual therapy. District offered credible evidence that Student had been resistant to individual therapy in the past and that Student would benefit from the interactions and

conversational practice in group therapy where the therapist could monitor and facilitate the interactions. (Findings of Fact 1-42 and Legal Conclusions 1-21.)

ISSUE 2(D) DISTRICT OFFERED STUDENT PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT FOR THE 2010-2011 SCHOOL YEAR.

22. Student's contention that District failed to offer Student an adequate educational placement for the 2010-2011 school year is without merit. Student failed to show that he needed a more restrictive setting such as an NPS either to implement his IEP or to receive an educational benefit. It is clear from the evidence that Frostig School offers an excellent program designed to meet the needs of and maximize the potential of learning disabled students. However, placement at Frostig or a similar NPS, nor maximizing a student's potential is required for Student to receive a FAPE. (Findings of Fact 1-42 and Legal Conclusions 1-22.)

23. District has met its legal obligation to offer Student a FAPE in the LRE. As set forth in legal conclusion 14 above, the Ninth Circuit Court of Appeal in *Rachel H.*, determined a four prong test for determining whether a placement is the LRE. First, consideration is to be given to the educational benefits to the child of placement full-time in a regular class. Historically, Student has been placed in general education classes with RSP support. He made educational progress in the 2009-2010 school year passing all but one elective class. For the 2009-2010 school year, Student was placed in general education classes with RSP support from special education aides in language arts and math and consultation with his case carrier. For the 2010-2011 school year, District offered Student placement in collaborative classes for language arts, math, science and social studies. Collaborative classes are taught by a general education teacher with the assistance of a special education teacher in the class for a minimum of 30 minutes per class. Student has shown his abilities to participate in a general education classroom and access the general education curriculum with some accommodations and modifications.

Student has received an educational benefit from placement in general education. The second *Rachel H.* factor is the non-academic benefits to the child of placement in a general education classroom. Here, Student has received a social benefit from participating in classes and extracurricular activities with non-disabled peers. The third factor is the effect the disabled child will have on the teacher and children in the class. Student only requires some accommodations and modifications by the teachers. There was no evidence that Student was disruptive to the class or impeded the teacher or other students in any way. The final factor to be considered is the cost of educating Student in a general education classroom. The evidence did not establish that there was any additional cost incurred by educating Student in general education classes. Student has not shown that he needs a more restrictive environment for implementation of his IEP or to receive an educational benefit. The law requires that Student be placed in the least restrictive environment. District's offer of placement in collaborative classes with typically developing peers, taught by general education teachers assisted by special education teachers, with modifications and accommodations is appropriate for Student and is the LRE. (Findings of Fact 1-42 and Legal Conclusions 1-23.)

REMEDIES

24. When a local education agency fails to provide FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*School Committee of the Town of Burlington v. Department of Education* (1996) 471 U.S. 359, 374 [85 L.Ed.2d 385, 105 S.Ct. 1996]; 20 U.S.C. § 1415 (i)(C)(iii).) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief which may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. An award of compensatory education need not provide a "day-for-day compensation." (*Parents of Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d

1489, 1496.) The right to compensatory education accrues when the district knows, or should know, that student is receiving an inappropriate education. The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1496.)

25. A Student may be entitled to compensatory education if he is denied a FAPE. As compensatory education, Student requested placement at Frostig a NPS, 10 hours of individual education therapy for each week, and 2 hours each week of individual speech and language therapy provided outside of school hours by a non-public agency. Student requested that the compensatory education cover the time period of December 11, 2009, including extended school year (ESY) 2010 through the date of this decision. Here, District's offer of FAPE for the 2010-2011 school year denied Student a FAPE because it required him to be pulled from his regular classes to receive speech and language therapy. When Student is pulled from his regular classes, he misses instruction and cannot keep up with the class. Student's disabilities are such that he must pay close attention to instruction to access the general education curriculum and his educational benefit. Because Mother disagreed with the IEP, District could not implement it. Instead of receiving the 110 minutes of speech and language therapy to which he was entitled, he received the 55 minutes of pull-out speech and language services contained in the prior IEP. For these reasons, Student is entitled to educational therapy to assist him in catching up with the material missed in class since March 22, 2010, and compensatory speech and language therapy to compensate him for the extra increment of speech and language therapy which was not provided because Mother did not consent to additional pull-out speech and language services and District would not provide the speech and language services outside of the regular school day.

26. Student is entitled to 18 hours of compensatory speech and language therapy and an additional 18 hours of educational therapy focusing on the development

of fundamental skills in language arts. This order of compensatory education is based upon the loss of educational opportunity for 18 weeks incurred during the periods of: (1) March 22, 2010, through June 18, 2010, and (2) September 1, 2010, through October 22, 2010. The 18 hours of compensatory educational therapy is to compensate Student for the loss of educational opportunity caused by his pull-out from core academic classes for speech and language therapy for one hour per week over the 18 weeks. The 18 hours of compensatory speech and language therapy is to compensate Student for the loss of the extra 55-minute increment of speech and language therapy which was not provided to him during the 18-week period because District would not provide his speech and language therapy outside of the normal school day. (Factual Findings 1-42, Legal Conclusions 1-26)

ORDER

1. District shall fund and provide Student with 18 hours of group compensatory speech and language therapy provided by a non-public agency outside of the regular school day to be completed within one year of the effective date of this decision.
2. District shall fund and provide Student with 18 hours of educational therapy focusing on language arts to be provided by a non-public agency outside of the regular school day to be completed within one year of the effective date of this decision.
3. District shall hold an IEP meeting within 15 days of the effective date of this decision to develop an IEP which provides Student's group speech and language therapy outside of the regular school day.

PREVAILING PARTY

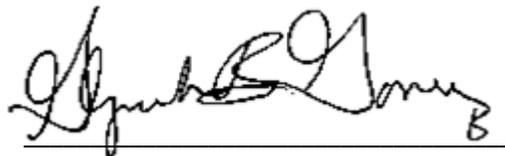
The decision in a special education administrative due process hearing must indicate the extent to which each party prevailed on the issues heard and decided at the

hearing. (Ed. Code, § 56507, subd. (d).) District prevailed on issue 1, 2 (a), (b), and (d).
District and Student each prevailed in part on issue 2 (c).

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 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: October 21, 2010

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

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings