BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUARDIAN ON BEHALF OF STUDENT, v. GARDEN GROVE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2010041542

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on August 9, 10, 11, and 12, 2010, in Laguna Hills, California.

Jack Anthony, Attorney at Law, represented Student. Student's guardian (Guardian) attended all four days of hearing.

S. Daniel Harbottle and Sara Young[1], Attorneys at Law, represented the Garden Grove Unified School District (District). Emily Marx, a law clerk employed by Mr. Harbottle's firm, attended the hearing on August 10, 2010. Gary Lewis, Assistant Superintendent for the District, attended all four days of hearing.

Student filed his request for due process hearing (complaint) on April 28, 2010. On June 15, 2010, OAH continued the due process hearing for good cause.

[1] Ms. Young attended the hearing on August 9, 11, and 12, 2010.

On August 12, 2010, at the close of the hearing, the parties were granted permission to file written closing arguments by September 3, 2010. Upon receipt of the written closing arguments,[2] the matter was submitted and the record was closed.

ISSUE

Did District deny Student a free and appropriate public education (FAPE) by failing to hold his annual individualized education program (IEP) meeting and make an offer of placement and services, for the time period of May 16, 2008[3] through June 17, 2009?

FACTUAL FINDINGS

1. Student is a 16-year-old boy, who, at all relevant times, resided in the District, and was eligible for special education under the primary eligibility category of autistic-like behaviors, and the secondary disability of other health impairment (attention deficit disorder). Student began attending Cook Elementary School (Cook) in the District in September 2003, when he was nine years old, and in the second grade.

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[2] On September 7, 2010, Student filed a motion to strike portions of District's closing brief. On September 8, 2010, District filed an opposition to Student's motion to strike. On September 9, 2010, Student's filed a reply to District's opposition. For the reasons set forth in Student's moving papers, Student's motion is granted.

[3] Student's complaint sets forth the date of May 5, 2008 as the beginning of the relevant time period. However, after a review of the evidence, this ALJ has determined that May 16, 2008, the day following the execution of the assessment plan, is the appropriate date commencing the relevant time period.

2. During the 2006-2007 school year, when Student was twelve years old and in the fifth grade, he was in the general education program, and received related services in the areas of speech and language, occupational therapy, one-to-one aide, Intensive Behavior Intervention (IBI), audiology, adaptive physical education, social skills training, and resource support services (RSP). In addition to school-based speech and language services, Guardian provided Student private one-on-one speech and language services, as well as, reading comprehension instruction through the Reading and Language Center (RLC), a non-public agency (NPA).

3. IEP team meetings were held on February 5, 2007, and April 9, 2007, which did not result in an offer from the District of placement and services. On June 20, 2007, District made an offer of placement and services to Student in a letter.

4. In July 2007, Guardian rejected District's June 20, 2007 offer, and after sending written notice to District, unilaterally placed Student at RLC for full-time educational services.[4]

[4] On August 20, 2007, Student filed a due process hearing complaint, seeking reimbursement for services rendered by RLC, transportation costs, compensatory education, and payment for prospective services at RLC. On June 24, 2008, OAH issued a decision ordering reimbursement, but denied other relief. On September 22, 2008, Student filed an appeal of OAH's decision in the United States Court, Central District. On October 5, 2009, the District Court issued its final judgment. District filed an appeal in the United States Court of Appeals, Ninth Circuit, which was pending at the time Student filed his complaint in the instant matter. The reimbursement issues set forth in the current matter are for a time period subsequent to that set forth in Student's previous complaint.

5. On November 9, 2007, Scott Adams (Mr. Adams), who was the District's program supervisor for the Office of Special Education, sent Guardian, via certified mail and first class mail, a proposed assessment plan for Student's triennial review. Mr. Adams, who testified at hearing, earned his bachelor's degree in liberal arts in 1998, his master's degree in special education in 2000, and his clear credentials in special education and administration. Mr. Adams had been the program supervisor for District five years, leaving in 2009 to open a wellness and yoga center. As a program supervisor, he was responsible for overseeing the special education program and training teachers and staff. In that capacity, he was responsible for 12 schools, and managed approximately 150 cases per year. At hearing, Mr. Adams explained that he often sent letters to Guardian via certified mail, in addition to first class mail and fax, because Guardian would often complain of not receiving District correspondence. In a letter enclosed with the proposed assessment plan, Mr. Adams stated that Student's triennial IEP meeting was due to be held no later than February 17, 2008.

6. On November 28, 2007, Student's counsel, Jack Anthony (Mr. Anthony), sent Mr. Adams a letter advising him that at Student's last IEP meeting, held on April 9, 2007, the IEP team agreed to extend Student's annual/triennial IEP review from February 17, 2008 to May 16, 2008. Consequently, Mr. Anthony advised Mr. Adams that the November 2007 assessment plan was premature, and advised that Guardian would not be signing the assessment plan.

7. On February 7, 2008, Mr. Adams sent Guardian, via certified mail and first class mail, a notice of IEP meeting, scheduling the IEP meeting for February 15, 2008.

8. On February 11, 2008, Mr. Anthony sent Mr. Adams a letter reiterating that the annual/triennial was to take place on or before May 16, 2008, but not in February 2008.

9. On April 29, 2008, District's school psychologist, Dr. Mai Van (Dr. Van), sent Guardian a proposed assessment plan concerning Student's triennial assessment. Guardian signed the assessment plan on May 15, 2008.

10. On May 23, 2008, Dr. Van sent Guardian a letter requesting dates and times to assess Student for his triennial assessments. Dr. Van advised that she would need to see Student for five sessions, approximately one and one-half hours per session, to conduct Student's assessment. Dr. Van also enclosed rating scales and questionnaires for Guardian to complete concerning Student. Specifically, Dr. Van enclosed the Behavior Assessment System for Children – Second Edition (BASC-2) Parent Rating Scales, Conners' Parent Rating Sale, Gilliam Autism Rating Scale (GARS), Social Skills Rating System, Vineland Adaptive Behavior Scales – Second Edition (Vineland II), and a Health and Developmental Questionnaire.

11. On May 29, 2008, Guardian sent Dr. Van a letter advising that she had already scheduled assessment sessions with the speech pathologist, Marianne Merito, for June 5 and 12, 2008, with the RSP teacher, for June 11, 2008, and with the adaptive physical education (APE) teacher for June 4, 2008. She advised that she would also schedule two, one and one-half hour sessions with Dr. Van for June 3, and June 10, 2008.

12. On June 2, 2008, the APE teacher advised Guardian that she would not be able to assess Student on June 4, 2008. Guardian rescheduled the APE assessment for June 11, 2008.

13. On June 2, 2008, Dr. Van sent RLC rating scales, questionnaires, and forms to complete concerning Student. Specifically, Dr. Van sent the BASC-2 Teacher Rating Scales, the Conners' Teacher Rating Scale, the Social Skills Rating System, the Vineland-II, the GARS, and a Three Year Summary Report.

14. On June 3, 2008, Guardian brought Student to Cook for his first session of assessments with Dr. Van. While there, Dr. Van and Guardian discussed the assessment schedule. Dr. Van sent Guardian a letter that day confirming the appointment times as follows: (1) June 3, 2008 and June 10, 2008 with Dr. Van for one and one-half hours per session; (2) June 5, 2008 and June 12, 2008 with Marianne Merito, the speech pathologist, for one hour per session; and (3) June 11, 2008 with the RSP teacher, for forty-five minutes, and with the APE teacher, for thirty minutes. Also in the letter, Dr. Van requested that Guardian make Student available for a total of six additional hours for District staff to complete Student's assessments. Specifically, Dr. Van requested two, two hour sessions to complete her assessment, and requested an additional hour for the RSP teacher's assessment, as well as an additional hour for the APE assessment.

15. On June 10, 2008, Mr. Adams sent Guardian, via certified mail and first class mail, an IEP meeting notice for June 19, 2008 for Student's triennial/annual IEP meeting. District invited school-based team members, as well as members from RLC. At hearing, Mr. Adams explained that it was his practice to fax and mail IEP meeting notices to non-District service providers and invitees. For District employees, he would email the notices.

16. On June 10, 2008, District sent Guardian two forms. The first form, an "Authorization for Student Observation," was drafted by Dr. Van, pursuant to Guardian's request, so that District staff could observe Student at RLC. Guardian executed the form on June 11, 2008, and indicated on the form that the observations would need to be conducted in compliance with RLC policies. The second form, an "Authorization for Release of Confidential Information," was a standard form used by District to obtain information from service providers, and requested release of information from RLC concerning Student. Specifically, the form authorized "the release of confidential---including psychological, medical, speech and language information" regarding Student.

Guardian, who testified at hearing, refused to sign this form because she felt the request was too broad.

17. On June 16, 2008, Dr. Van observed Student at RLC during a 15 minute period allotted by RLC, and noted that Student maintained good attention and demonstrated on-task behavior throughout the observation.

18. On June 16, 2008, Guardian completed the questionnaires and rating scales, and returned them to Dr. Van.

19. On June 16, 2008, Guardian requested that the IEP meeting be rescheduled from June 19, 2008 to June 25, 26, or 27, 2008. Guardian also requested that District invite specific individuals from RLC, including Barbara Pliha, who was the Director of RLC, as well as Student's speech pathologists and instructors.

20. On June 19, 2008, Mr. Adams sent Guardian a letter via fax, certified mail, and first class mail, stating that although District staff was not contractually obligated to work beyond June 19, 2008, District team members were willing to convene on June 27, 2008. Enclosed with the June 19, 2008 letter was an updated IEP meeting notice setting forth the specific names of the RLC staff members Guardian requested District to invite, and forwarded the notice to RLC. Mr. Adams stated in the letter that the IEP meeting would be limited to ESY discussions, because District members had not had an opportunity to complete Student's assessments, and because Guardian had not provided consent for RLC to release updated present levels of performance for District to consider. Mr. Adams enclosed a modified "Authorization for Release of Confidential Information" for Guardian's signature, which authorized the completion of questionnaires and rating scales Dr. Van had sent to RLC on June 2, 2008, as well as a release of current samples completed by Student, and assessment data and reports conducted by RLC. In addition, Mr. Adams requested six additional hours in which the District could assess Student, as Dr. Van had previously requested on June 3, 2008.

21. On June 23, 2008, Guardian faxed Mr. Adams a letter consenting to the June 27, 2008 IEP meeting date. She stated she would take Student to Cook to be assessed on July 8, 9, and 10, 2008 from 8:00 a.m. to 10:00 a.m. Guardian also executed and enclosed the modified "Authorization for Release of Confidential Information." Guardian added additional language to the authorization stating that RLC could permit appropriate District personnel to view assessment data at RLC in compliance with RLC's policy not to distribute copies of the data. Guardian also added language stating that RLC could complete the rating scales and questionnaires after RLC received confirmation from District that District would compensate RLC for the time required to complete the requested information.

22. On June 24, 2008, Mr. Adams sent Guardian a letter, via fax, certified mail, and first class mail, stating that he would present the July 8, 9, and 10, 2008 dates to the IEP members still conducting assessments. He stated that he would notify Guardian and advise her of the assessors' availability on those dates.

23. On June 24, 2008, RLC advised District that RLC personnel would not be available to attend the June 27, 2008 IEP meeting. Consequently, the IEP team did not meet on June 27, 2008.

24. Beginning on July 1, 2008, Student began receiving group social skills training, one hour per week. These services were provided by Kelly McKinnon & Associates (KMA). At hearing, Guardian explained that she retained KMA to help Student learn the social skills necessary to interact with others, including his peers. Guardian paid KMA $65.00 per hour, and traveled 30.82 miles from her home to KMA to transport Student. From July 1, 2008 to June 17, 2009, Student attended social skills training at KMA on 40 occasions, and Guardian paid KMA $2,600.00.

25. On July 2, 2008, Mr. Adams sent Guardian and RLC, via fax and first class mail, a new notice of IEP meeting, rescheduling the meeting for July 11, 2008.

26. On July 2, 2008, Mr. Adams sent RLC, via fax and first class mail, a letter indicating District would pay RLC $85.00 per hour for a maximum of three hours for RLC staff to complete the appropriate assessment protocols. The $85.00 rate was based on the Orange County Department of Education's county-wide agreement for NPA fees.

27. On July 7, 2008, RLC's Director of Operations, Karen Harvey (Ms. Harvey), faxed a letter to Mr. Adams stating that since District had no contract with RLC, RLC would bill District at the regular rate of $120.00 per hour to complete Student's rating scales.

28. On July 8, 2008, Mr. Adams sent Ms. Harvey a fax stating that District was willing to pay the $120.00 per hour, not to exceed three hours, to complete and return the assessment protocols as set forth on the "Authorization for Release of Confidential Information". Thereafter, RLC forwarded to District the completed rating scales and questionnaires.

29. On July 8, 2008, Guardian took Student to Cook to be assessed. No District staff was present to assess Student. Guardian received no prior confirmation from Mr. Adams regarding the assessors' availability on July 8, 9, or 10, 2008.

30. On July 9, 2008, Student's attorney, Jack Anthony, sent District's counsel a letter stating that RLC never received notice of the July 11, 2008 IEP meeting, and that neither Guardian nor any designated RLC staff could attend an IEP meeting on July 11, 2008. Mr. Anthony requested the July 11, 2008 meeting to be rescheduled to another time.

31. On July 23, 2008, Mr. Adams sent Guardian a letter, via certified mail, first class mail, and fax, stating that because efforts to conduct Student's IEP meeting had been unsuccessful, District was making Student an offer of placement and services for the ESY as follows: (1) specialized academic instruction of 120 minutes per day, beginning immediately and ending on August 22, 2008; speech and language therapy,

one time per week for thirty minutes per session, for a total of four sessions; and (3) clinic-based occupational therapy, one time per week for forty-five minutes per session, to be provided by a NPA. The offer was based on District's review of prior assessments, present levels of performance, information presented at a prior due process hearing held in April 2008, and the methodologies and programs provided. Guardian did not consent to the offer.

32. On August 20, 2008, Mr. Adams contacted Ms. Harvey to determine RLC's availability for an IEP meeting for September 3, 2008, from 8:00 a.m. to 1:00 p.m. After receiving confirmation from RLC that RLC staff would be available to meet on September 3, 2008 from 8:00 a.m. to 1:00 p.m., Mr. Adams sent, via certified mail, first class mail, and fax, a notice of IEP meeting to Guardian and RLC staff, scheduling the IEP meeting for September 3, 2008.

33. On August 26, 2008, Mr. Anthony sent Mr. Adams a letter requesting that the September 3, 2008 meeting begin at 9:00 a.m., as opposed to 8:00 a.m., and end at 2:00 p.m., as opposed to 1:00 p.m.

34. On August 28, 2008, Mr. Adams faxed a letter to Ms. Harvey of RLC indicating the meeting would begin at 9:00 a.m., and that District would pay $85.00 per hour, for up to five hours, to each of the designated RLC staff members to attend the September 3, 2008 IEP meeting. Mr. Adams also stated that should the IEP meeting conclude prior to the five hour limit, District would only pay for actual number of hours of the IEP meeting.

35. On August 29, 2008, Ms. Harvey faxed a letter to Mr. Adams stating District would need to pay the regular rate of $120.00 per hour, and that she would make the RLC staff members available only if she received confirmation by 5:00 p.m. that day that District would pay the $120.00 per hour rate for each of the designated RLC staff members.

36. On August 29, 2008, Dr. Van sent Guardian another letter requesting that she make Student available for a total of six hours of assessment sessions: two additional, two hour sessions for her to complete Student's triennial assessment, as well as an additional 90 minute session with the RSP teacher, and an additional 30 minutes for the APE assessment.

37. On September 2, 2008, at 4:35 p.m., Ms. Harvey faxed a letter to Mr. Adams stating it did not receive confirmation from District regarding the $120.00 per hour payment rate, and, as such, no RLC members would be attending the September 3, 2008 IEP meeting. Consequently, the September 3, 2008 IEP meeting was cancelled.

38. On September 8, 2008, in response to Dr. Van's August 29, 2008 letter for six additional hours to assess Student, Guardian advised she would make Student available for thirty minutes of assessment time on September 30, 2008, two hours on October 7, 2008, one and one-half hours on October 14, 2008, and two hours on October 21, 2008.

39. On September 12, 2008, Mr. Adams sent Guardian, via certified mail and first class mail, a letter expressing concern over the amount of time before and between the assessment dates Guardian provided. Based on the dates Guardian provided, Mr. Adams stated that the IEP team would not likely meet until some time in November 2008, two months into the 2008-2009 school year. In order to avoid that, Mr. Adams requested that Guardian identify dates within the next two weeks to allow District to complete the assessments.

40. On September 23, 2008, Guardian sent Mr. Adams a letter advising that the dates she provided were the only dates she could take time off from work to make Student available, and, therefore, would not be providing other dates in which to complete Student's assessments.

41. District staff performed assessments on September 30, 2008, October 7, 2008, and October 14, 2008. However, Dr. Van was unable to perform any assessments on October 21, 2008 because Student did not appear for his session. In a letter dated October 24, 2008, Guardian advised that Student was ill on October 21, 2008. Guardian rescheduled the October 21, 2008 assessment date to November 4, 2008, for Dr. Van to complete her assessment.

42. On October 27, 2008, the District's speech pathologist, Marianne Merito (Ms. Merito), requested an additional hour to assess Student. Guardian, on October 28, 2008, faxed a letter to Ms. Merito advising that, given her employment constraints, her only available dates for her to get Student to any assessment session would be on November 11, 2008, November 25, 2008, or December 2, 2008. Guardian requested that, by November 4, 2008, Ms. Merito advise her in writing which one of the provided dates she would conduct the assessment. On November 3, 2008, Ms. Merito sent Guardian a letter explaining that November 11, 2008 was a school holiday, so she would conduct a speech and language assessment on November 25, 2008, and that an audiological assessment would be conducted on December 2, 2008. At hearing, Guardian testified she never received this letter from Ms. Merito; however, this claim is not credible given the overall frequency in which Guardian made such claims about non-receipt of District correspondence, and given the multiple modes of delivery the District had adopted to send correspondence to Guardian.

43. On November 13, 2008, Sara Morgan, the District's IBI Program Supervisor (Ms. Morgan), appeared at RLC to observe Student pursuant to the authorization to observe Guardian signed on June 11, 2008. RLC denied Ms. Morgan access to observe Student, advising Ms. Morgan that the June 11, 2008 authorization had expired per RLC policy. Ms. Harvey, who testified at hearing, explained that it was the policy of RLC that authorizations to observe expire after 30 days. Ms. Harvey also explained that Ms.

Morgan had no appointment to observe Student, which was another reason Ms. Morgan was denied access to observe.

44. Ms. Morgan, who testified at hearing, received her bachelor's degree in communications in 1999, and her master's degree in special education in mild-to-moderate disabilities in 2003. She taught in a special day class (SDC) for three years with the Westminster Unified School District, and began working for District in 2004 to oversee the intensive behavior program. She provides weekly training to the behavior intervention case management staff, and teaches adult education classes. Ms. Morgan explained that she did, in fact, make an appointment, and believed she was authorized to observe pursuant to the June 11, 2008 authorization, as the form included no expiration date. Similarly, Dr. Van explained at hearing that when Guardian requested Dr. Van to draft the authorization in June 2008, Guardian never advised her that the authorization would have an expiration date.

45. On November 19, 2008, Mr. Adams sent via certified mail, email, and also personally delivered to Guardian's residence, another consent form to permit Ms. Morgan to observe Student at RLC. Also on November 19, 2008, Mr. Adams personally delivered to Guardian's residence, as well as sent via certified mail, a notice of IEP meeting scheduled for December 10, 2008. At hearing, Mr. Adams explained that when he personally delivered the consent form and IEP notice, he placed them in an obvious place near the front door.

46. On November 22, 2008, Guardian signed the consent form to permit Ms. Morgan to observe Student at RLC. On November 25, 2008, Mr. Adams faxed the consent form to Ms. Harvey of RLC.

47. On November 25, 2008, Student did not appear for his scheduled assessment session with the speech pathologist, Ms. Merito.

48. On December 2, 2008, Student did not appear for his scheduled audiological assessment.

49. On December 3, 2008, Mr. Adams sent Guardian a letter via certified mail, first class mail, and also personally hand delivered the letter to Guardian's residence, requesting that Guardian make Student available for his assessment sessions no later than December 8, 2008. Mr. Adams stated that failure to do so would result in District filing a request for due process seeking an order to assess Student. In addition, Mr. Adams expressed that District had not received confirmation of Guardian's attendance at the upcoming December 10, 2008 IEP meeting that he had sent via certified mail and hand-delivered to her residence on November 19, 2008.

50. On December 3, 2008, Ms. Morgan observed Student at RLC. At hearing, Ms. Morgan explained that the purpose of her observation was to see the social opportunities Student had at RLC. She observed three, five minutes intervals between his one-on-one instructional sessions, as these were the only times Student had an opportunity to interact with others. Her overall impression was that Student did not initiate conversation, but would respond when spoken to. She also noted that Student did not make good eye contact when responding, yet seemed comfortable interacting with his peers.

51. On December 9, 2008, Student's attorney, Tania Whiteleather (Ms. Whiteleather), who had been representing Student in the appeal of a prior OAH decision involving District, sent Mr. Adams a letter advising that Guardian never received his hand-delivered letter on December 3, 2008, but received his letter via certified mail on December 6, 2008. In addition, Ms. Whiteleather explained that Guardian never received the notice of the December 10, 2008 IEP meeting, despite Mr. Adams' claim that he had sent the notice via certified mail and hand-delivery. Guardian's assertion that she never received notice of the December 10, 2008 IEP meeting is not credible, given the multiple

modes of delivery employed by Mr. Adams on November 19, 2008, to deliver the notice. Ms. Whiteleather also advised in the letter that the assessment plan Guardian had signed on May 15, 2008, had long expired. Finally, Ms. Whiteleather stated that if District wished to conduct any additional assessments, that District should contact her office to identify IEP dates and to discuss the need for further evaluations.

52. In preparation for the December 10, 2008 IEP triennial meeting, Dr. Van prepared a multidisciplinary assessment report that included the results of the rating scales and questionnaires completed by RLC personnel, as well as assessment results from tests administered by her, and noted her observations. Dr. Van concluded Student's attention and ability to focus had increased, as well as his IQ score. She recommended a wraparound model with the collaboration of service providers to help Student maintain his rate of success and to help him improve in the areas of socialization and interpersonal relations. Dr. Van, who testified at hearing, has been employed with District as a school psychologist for 10 years, has assessed hundreds of students, and has provided counseling services, and crisis management. Dr. Van concluded that socialization and interpersonal relations continue to be areas of need for Student that could affect other skills areas. Dr. Van felt that Student needed to be around more peer role models in a comprehensive education environment, and not isolated in a one-on-one setting.

53. Ms. Morgan prepared a triennial report on December 10, 2008, outlining the results of Student's behavioral observation of Student at RLC. Ms. Morgan recommended that Student be exposed to multiple, daily, social experiences, and that activities in isolation should be extremely limited. Ms. Morgan further recommended that Student participate in facilitated social interactions with typical peers, as well as peers with special needs.

54. The RSP teacher prepared a report on December 10, 2008, showing that she administered to Student the Woodcock Johnson III Tests of Achievement (WJIII) to assess Student's academic levels. The results of the WJIII showed that when compared to others at his grade level, Student's academic skills were within the high average range. In addition, Student's fluency with academic tasks was in the average range, and his ability to apply academic skills was in the low average range. The RSP teacher concluded that Student had shown steady improvement in all areas of academics, but continued to struggle in reading and with applying academic skills.

55. On December 10, 2008, the IEP team met for Student's annual/triennial. In attendance at the meeting were the general education teacher, special education teacher, speech pathologist, occupational therapist, school psychologist, adaptive physical education specialist, IBI specialist, audiologist, DIS nurse, former and current principal, program supervisor, and District's attorney. Neither Guardian, nor members from RLC, was present at the meeting. Consequently, the meeting was adjourned, and District noted in the IEP notes that it would make further efforts to complete the assessments and hold an additional meeting to complete the triennial review.

56. On December 12, 2008, in response to Ms. Whiteleather's December 9, 2008 letter, District's counsel, Jaberi A. Willis, advised that District had been attempting to complete the assessment process, but Guardian had failed to make Student available for assessments. Mr. Willis further explained that District could not make an appropriate offer of a FAPE without understanding Student's present levels of performance and his needs. As such, Mr. Willis requested that Guardian provide dates and times during the week of December 15-19, 2008 and January 5-9, 2009 that Student would be made available for completion of assessments.

57. On January 6, 2009, Mr. Adams sent Guardian a letter via certified mail, stating that District was unaware of her intention to not attend the December 10, 2008

IEP meeting, and stated that his letter would serve as District's final attempt to schedule dates to complete the triennial assessment and IEP for Student. Mr. Adams requested Guardian to provide him with a schedule to complete the speech and language and audiological assessments, no later than January 19, 2009. Mr. Adams also requested Guardian to provide him with a proposed IEP date at least one week after her latest proposed assessment date.

58. On January 15, 2009, Guardian faxed a letter to Mr. Adams stating that neither she, nor Ms. Whiteleather received an invitation to the December 10, 2008 IEP meeting. In addition, she indicated that RLC had not received the meeting notice either. [5] Guardian stated that the first she had heard of the December 10, 2008 IEP meeting, was on December 6, 2008, when she received Mr. Adams' December 3, 2008 letter. Guardian also stated that no one responded to Ms. Whiteleather's December 9, 2008 letter requesting District to contact her office to discuss new IEP dates. Guardian stated that if District wished to conduct any additional assessments or wanted to discuss any IEP dates, District should contact Ms. Whiteleather.

59. On January 29, 2009, Mr. Adams sent Guardian, via certified mail, a notice of IEP meeting scheduled for March 4, 2009, and transmitted the IEP notice to all invitees, including RLC. Mr. Adams also sent Guardian a letter, via certified mail, stating that he invited RLC, and confirmed RLC's availability on March 4, 2009.

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[5] As stated in Factual Finding 51, Guardian's assertion that she did not receive notice of the December 10, 2008 IEP meeting is not credible. For the same reasons, especially given the multiple modes of transmission employed by Mr. Adams to send IEP notices to Guardian and IEP invitees, Guardian's claim that RLC never received notice of the December 10, 2008 IEP meeting is not credible.

60. On February 12, 2009, District filed a request for due process hearing, OAH Case No. N2009020458. District's complaint set forth the following issue: Whether District had the right to complete Student's triennial assessment, including observing him in his private school placement, pursuant to the May 15, 2008 assessment plan.[6]

61. On March 3, 2009, Mr. Adam faxed a letter to Ms. Harvey of RLC, confirming RLC's attendance at the March 4, 2009 IEP meeting, and advising that District would compensate up to four RLC personnel to attend the IEP.

62. On March 3, 2009, Ms. Harvey faxed a letter to Mr. Adams stating that she was under the impression that the March 4, 2009 date was tentative, as RLC did not receive written confirmation a minimum of two weeks prior, as RLC had previously requested during her conversation with Mr. Adams on January 29, 2009. At hearing, Ms. Harvey testified that RLC's policy required two weeks written notice for IEP meetings. Because RLC had not received two weeks notice of the March 4, 2009 IEP meeting, and had not received prior confirmation of payment, RLC indicated it would not attend the meeting. In addition, Ms. Harvey stated RLC never received an invitation to the March 4, 2009 meeting. This ALJ does not find credible Ms. Harvey's assertion that she did not receive notice of the March 4, 2009 IEP, given the discussion she and Mr. Adams had confirming RLC's availability, coupled by the multiple modes of delivery Mr. Adams routinely used when inviting non-District service providers (i.e, fax and first class mail).

63. On March 4, 2009, the IEP team met. The attendees included Guardian, Student's advocate, District's administrative designee, Dr. Van, Ms. Morgan, Ms. Merito, Anne Fleck, who was Student's occupational therapist, the special education teacher, the audiologist, the APE teacher, and District's attorney. Neither the general education teacher nor any RLC personnel was present at the meeting. The team discussed that

[6] The ALJ has taken administrative notice of the content of this pleading.

Student had not attended a District school since June 2007. Guardian advised the team that Student had been attending social skills training with KMA since July 2008. Guardian had not previously shared this information with any District assessors. Ms. Morgan and Dr. Van explained at hearing that if they had known that Student was attending a social skills group, they would have observed him there. Dr. Van further testified that although she had not previously asked Guardian whether Student was receiving private social skills training, she assumed Guardian would have volunteered all pertinent information in order to help develop a comprehensive assessment of Student.

64. At the March 4, 2009 IEP meeting, the assessors presented their reports, with the exception of the speech pathologist, and the audiologist, as they had not had an opportunity to complete their assessments. Anne Fleck, Student's occupational therapist (Ms. Fleck), presented her report dated June 18, 2008, and noted that Student demonstrated decreased sensory seeking behaviors and decreased impulsivity. Ms. Fleck, who testified at hearing, has been a registered occupational therapist since 1983, has had a pediatric private practice since 1990, and has been contracting with District for the last 15 years. She has professional memberships with the American Occupational Therapy Association, and with the National Board for Certification in Occupational Therapy. Ms. Fleck explained that she has been providing Student with clinic-based occupational therapy for last six years, particularly in the areas of sensory integration, body awareness, fine motor skills, and visual perceptual skills. She noted that since Student began attending RLC on a full-time basis, Student's anxiety decreased, which resulted in a decrease in sensory seeking behavior. Consequently, Student did not require as many sensory diet activities. Ms. Fleck opined that the decrease in anxiety appeared to be the result of the smaller environment at RLC, which did not require Student to filter out the same amount of stimuli as he was required to do at District's school. Student's impulsivity decreased, evidenced by him taking his time to control his

hand during writing time. Overall, Ms. Fleck found that during the 2008-2009 school year, Student had become more conversational, less anxious, and more engaged.

65. At the March 4, 2009 IEP meeting, District requested additional dates from Guardian in order for the speech pathologist and audiologist to complete their assessments. Guardian declined to offer any additional dates, contending that she had provided ample opportunity for District to assess Student. In addition, Guardian, through her advocate, asserted that the May 2008 assessment plan was out of date, and that they would not permit District to complete the assessments set forth in the May 2008 assessment plan.

66. On March 26, 2009, Mr. Adams spoke with Ms. Harvey of RLC and requested that RLC participate in the continuation of Student's IEP meeting which began on March 4, 2009. Mr. Adams and Ms. Harvey discussed April 29 and April 30, 2009 as possible dates.

67. On March 27, 2009, Ms. Harvey faxed a letter to Mr. Adams memorializing their March 26, 2009 discussion, and advised that District would need to send RLC an invitation to the IEP meeting, provide written confirmation of the IEP meeting at least two weeks in advance, and provide written confirmation of payment at a rate of $125.00 per hour per staff member. In addition, Ms. Harvey's letter stated that in order to avoid any further experience involving District's claims that it sent RLC correspondence in which RLC did not receive, Ms. Harvey requested that Mr. Adams place a follow-up call to RLC on the same day he faxes the written confirmation and the IEP invitation in order to confirm receipt of those items.

68. On April 3, 2009, Mr. Adams faxed and sent, via certified mail, an IEP meeting notice to RLC scheduling the IEP for April 30, 2009, as well as a letter stating that District would pay for up to three RLC staff members $125.00 per hour, per staff member, for the duration of the IEP meeting.

69. On April 13, 2009, Mr. Adams sent to Guardian, via certified mail, notice of the April 30, 2009 IEP meeting. On April 20, 2009, Guardian sent Mr. Adams a letter acknowledging the receipt of the notice, but inquired as to the purpose of the meeting. On April 23, 2009, Mr. Adams sent Guardian a letter, via certified and first class mail, explaining that the April 30, 2009 meeting was for the continuation of Student's triennial/annual IEP.

70. On April 24, 2009, Guardian sent Mr. Adams a letter requesting that the April 30, 2009 meeting be rescheduled to May 8, May 13, or May 20, 2009.

71. On April 28, 2009, Mr. Adams contacted Ms. Harvey to ascertain RLC's availability for May 8, May 13, or May 20, 2009. Ms Harvey advised that RLC that it would be available on May 13, and May 20, 2009, and sent Mr. Adams an April 28, 2009 letter memorializing their discussion. Ms. Harvey requested Mr. Adams to provide written confirmation of the chosen IEP date at a minimum of two weeks prior to the date of IEP meeting, as well as a follow-up call on the same day the written confirmation is sent.

72. On May 6, 2009, Mr. Adams sent Guardian a letter, via certified and first class mail, stating that the meeting would be rescheduled to May 20, 2009, and included a notice of IEP meeting setting forth that date.

73. On May 6, 2009, Mr. Adams also sent a letter to Ms. Harvey, via fax and certified mail, advising of the rescheduled date, and included a copy of the notice. Mr. Adams also confirmed that District would pay four RLC staff members $125.00 per hour to attend the May 20, 2009 IEP meeting.

74. On May 7, 2009, Guardian and District entered into a settlement agreement to resolve the consolidated OAH matters, N20090401666 and

N2009020458.[7] The settlement agreement provided, among other things, that Guardian would make Student available for the audiological assessment on May 12, 2008, and the speech and language assessment on May 14, 2009. The May 20, 2009 IEP meeting was postponed.

75. On May 12, 2009, the audiologist completed Student's audiological assessment, and concluded that all test results showed that Student had normal peripheral hearing acuity and normal middle ear functioning. She also noted that Student showed difficulty in processing auditory information in adverse competition.

76. On May 14, 2009, Ms. Merito completed her speech and language assessment of Student.

77. On June 2, 2009, Mr. Adams sent Guardian, via certified and first class mail, a notice of IEP scheduled for June 11, 2009.

78. On June 5, 2009, Ms. Harvey faxed a letter to Mr. Adams stating that because RLC did not receive written confirmation of the June 11, 2009 IEP a minimum of two weeks prior, as RLC had previously requested, RLC personnel would not be attending the June 11, 2009 IEP.

79. On June 8, 2009, speech pathologist, Ms. Merito, completed her report, but only included assessment results from tests she administered on June 5, and 12, 2008, as well as from her conversation with Student on May 14, 2009. She also included information from an observational rating scale completed by Guardian and Student. Because of the extended time period to complete the assessment, Ms. Merito concluded that no comprehensive conclusions could be drawn from the assessment results, nor could she determine Student's present levels of performance.

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[7] The settlement agreement included no release or waiver language barring the parties from all claims predating the settlement agreement.

80. On June 9, 2009, Guardian sent Mr. Adams a letter stating that she received the notice of the June 11, 2009 IEP meeting on June 6, 2009, providing her with only three business days to make arrangements with her employer. Consequently, she requested Mr. Adams to provide her with alternate dates so that she could make timely arrangements with her employer to attend an IEP meeting.

81. On June 10, 2009, Mr. Adams sent Guardian, via overnight mail, a notice of IEP meeting scheduled for June 18, 2009. The notice did not include RLC as invitees.

82. On June 18, 2009, the IEP team met to complete Student's triennial/annual review. RLC was not present, although the IEP notes indicated that best efforts were made to secure RLC's attendance. Guardian disagreed, in writing, to the IEP notes, and stated that RLC was not timely invited to the June 18, 2009 IEP meeting. At the meeting, the audiologist, the IBI program specialist, and the speech and language pathologist presented their respective reports. The team discussed proposed goals and objectives, and then District made the following offer of placement and related services: (1) 1550 minutes per week in the mild/moderate SDC; (2) two, 30 minute sessions per week of small group speech and language therapy provided by District providers, and one, 60 minute session per week of individual speech and language therapy provided by a non-public agency; (3) 30 minutes per month of APE; (4) 120 minutes a day, four days a week, of IBI clinic; (5) one, 45 minute session per week of occupational therapy; and (6) ESY of 240 minutes per day in the mild/moderate SDC, one, 30 minute session per week of small group speech and language therapy provided by District providers, one, 60 minute session per week of individual speech and language therapy provided by a non-public agency, and one, 45 minute session per week of occupational therapy.

83. At hearing, Guardian testified that she placed Student in RLC on a full-time basis, because, among other things, he had been making significant progress receiving one-on-one instruction from RLC on a part-time basis.

84. Barbara Pliha (Ms. Pliha), who was the director of RLC during the period in which Student attended RLC, July 2007 through July 2009, testified at hearing. Ms. Pliha received her bachelor's degree in education in 1965, her master's degree in education in 1987, as well as her master's degree in communicative disorders in 1989. In 1990, she received her certificate of clinical competence from the American Speech Hearing Language Association, as well as her speech pathology license from the State of California. Also in 1990, Ms. Pliha received a rehabilitative services credential in the area of speech and language from California State University at Fullerton, which authorizes her to teach children with disabilities in a SDC in which the primary disability is autism. She also holds a resource specialist certificate, which she received in 1993. Ms. Pliha has worked in the field of education since 1965, and has been an elementary school teacher, a reading specialist, a speech pathologist, and a SDC teacher. She holds a clear clinical or rehabilitative services credential, a clear general elementary teaching credential, a clear specialist instruction credential in reading, and a clear resource specialist certificate of competence. From 1998 to 2007, Ms. Pliha was the director of speech services at RLC, and was also a part owner. In 2007, after selling RLC, Ms. Pliha operated at RLC as its director until July 31, 2009. In September 2009, she opened her own NPA entitled the Pliha Speech & Learning Center.

85. Ms. Phila explained that RLC was comprised of speech therapists that provided speech and language therapy, as well as academic instruction. Although RLC was only certified in the areas of speech, language, and learning disabilities, and not in the area of academics, Ms. Phila concluded that since all academics have a language component, RLC was qualified to provide academic services. Ms. Phila further explained that the staff at RLC was mostly comprised of college students who were not credentialed; however, the staff received extensive instruction in the programs offered at

RLC. Each student at RLC received a customized program based on the student's individual needs.

86. Ms. Pliha has known Student since 2006, when she provided Student speech therapy services, as well as provided him with instructional services, particularly in the area of reading comprehension. Student had a high level of distractibility, had a difficult time staying focused, and required one-on-one instruction in order to learn. In March and April 2008, Ms. Pliha conducted a speech and language assessment of Student to determine his current levels of function concerning his receptive and expressive language skills and vocabulary development. Ms. Pliha administered the Peabody Picture Vocabulary Test 4A (PPVT-4A), which measures receptive vocabulary. Student received a standardized score of 79. She also administered the Expressive Vocabulary Test, Second Edition, Form A (EVT-2, A), which measures expressive vocabulary and word retrieval. Student received a standardized score of 79. Lastly, she administered the Clinical Evaluation of Language Fundamentals-4 (CELF-4), which identifies language and communication disorders. Student received a composite score of 18 for the core langue index, 14 for the receptive language index, 9 for the expressive language index, 21 for the language content index, 8 for the language memory index, and 17 for the working memory index. Ms. Pliha concluded that Student had a mild deficit in his expressive vocabulary knowledge, and had significant weaknesses in his language development, particularly in his listening comprehension and language-dependent memory skills. District did not receive a copy of Ms. Phila's assessment prior to June 18, 2009 IEP meeting.

87. In April 2008, Ms. Pliha and RLC's assistant director conducted an academic assessment of Student. The assessment consisted of the Gates-MacGinitie Reading Tests-Fourth Edition (GMRT-4), which measures vocabulary knowledge and reading comprehension, and the Test of Mathematical Abilities-Second Edition (TOMA-

2), which measures mathematical vocabulary, computation, general information, and story problems. On the GMRT-4, Student answered correctly 30 of the 48 questions. On the TOMA-2, Student received a standard score of 10 in mathematical vocabulary, of 12 in computation, of 5 in general information, and of 6 in story problems. Ms. Pliha concluded that Student had been progressing well academically since receiving instruction at RLC, and recommended that Student continue to participate in an intensive academic program that includes individualized instruction in the areas of reading comprehension, math, writing, and learning readiness. District did not receive a copy of Ms. Pliha's assessment prior to the June 18, 2009 IEP meeting.

88. During the period in which Student received full-time, one-on-one instructional services from RLC, from July 2007 through July 2009, Ms. Pliha explained that she determined the level of educational services Student would receive, and based that determination on assessment results, progress notes completed by the RLC instructors, and from team meetings that were held twice a month. Also, Ms. Pliha prepared academic goals for Student, and considered the California State Standards when doing so. Based on her recommendation, Student received instruction in the areas of reading comprehension, math, writing, and speech therapy. Student's academic schedule also included instructional programs such as the Visualizing and Verbalizing program authored by Lindamood-Bell, which focused on reading comprehension, listening comprehension, and the organization of thought. Student's program also included Fast ForWord, which is a computer program designed to develop and strengthen memory, attention, processing, and sequencing. Finally, Student's schedule included the Intercept program, which targeted areas in the brain that underlie learning. Beginning in July 2008, RLC provided Student instruction in social studies and science.

89. John Bell (Mr. Bell) was Student's instructor at RLC from 2007-2009. Mr. Bell, who testified at hearing, received his bachelor's degree in communications studies

in 1999, and his master's degree in communication studies in 2007. He worked as a substitute teacher with the District from 1999 to 2006, passed the California Basic Educational Skills Test (CBEST), and taught primarily language arts, science, and history. Mr. Bell became an instructor with RLC in 2004, and has taught approximately 50 – 100 students there. He is currently an instructor with Pliha Speech and Learning Center. He has also worked as an instructor in communication studies at California State University at Fullerton, and is presently an instructor at Orange Coast College. He has taught students with special needs, as well as typically-developing students, from preschool to college age. Mr. Bell provided Student one-on-one instruction in the areas of reading, writing, grammar, Intercept program, and Fast ForWord. Mr. Bell explained that in any given week, he would spend two to three hours a day with Student, at least three days per week. Student made significant progress, but as of the date of hearing, Mr. Bell believed Student still required one-on-one instruction, because Student is easily distracted by external and internal sources.

90. Student received 23 hours of one-on-one instruction per week from RLC. Ms. Pliha explained at hearing that Student made significant progress from May 2008 through June 2009. Specifically, Student achieved maximum competency in every area of the Fast ForWord program, and improved significantly in the areas of reading comprehension, listening comprehension, organization of thought, vocabulary, writing, and in the Intercept program. Student also made significant improvement in speech and language, particularly in the areas of listening, answering questions, and vocabulary development.

91. From May 5, 2008 through June 17, 2009, Guardian paid RLC $61,615.75 for these services, which included a thirty percent discount. Student attended RLC a total of 241 days. Guardian transported Student to RLC all 241 days, traveling 11.67 miles from her home to RLC.

LEGAL CONCLUSIONS

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

2. Student contends District committed a procedural violation by failing to hold Student's annual/triennial IEP meeting and offer him a placement and services from May 16, 2008, through June 17, 2009. Student contends that District's failure to make an offer of placement and services significantly impeded his right to a FAPE, entitling him to reimbursement for self-funded educational services and mileage from May 5, 2008, through June 17, 2009. Specifically, Student argues he is entitled to $61,615.75 in educational costs paid to RLC, and $2,600 paid to KMA, for a total of $64,215.75 in educational reimbursement. In addition, Student claims he is entitled to mileage reimbursement for 241, four-way trips to and from RLC, for a total of 11,250 miles. Moreover, Student contends he is entitled to mileage reimbursement for 40, two-way trips to and from KMA, for a total of 2,466 miles. District disagrees and contends that Guardian is not entitled to any relief, as Guardian's conduct impeded District's ability to conduct Student's triennial assessments. Consequently, District could not ascertain Student's present levels of performance in order to make an appropriate offer designed to meet his unique needs. In addition, Guardian delayed and prolonged the IEP process by repeatedly requesting noticed IEP meetings to be rescheduled. As discussed below, Student has not met his burden of proof of demonstrating that District denied him a FAPE, and, as such, is not entitled to relief.

3. California special education law and the Individuals with Disabilities Education Act (IDEA) provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE consists of special education and related services that are available

to the child at no charge to the parent or guardian, meet the standards of the state educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability…." (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "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).)

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

5. A procedural violation constitutes a denial of FAPE if it 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 to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f);

see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.) If a procedural violation is found to have significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892-895 [school's failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents right to participate in the IEP process, resulting in compensatory education award]; *Target Range, supra,* 960 F.2d at pp.1485-1487 [when parent participation was limited by district's pre-formulated placement decision, parents were awarded reimbursement for private school tuition during time when no procedurally proper IEP was held].)

6. A school district is required to conduct a reevaluation of each child at least once every three years, unless the parent and the local educational agency agree that a reevaluation is unnecessary. (34 C.F.R. 300.303(b)(1) (2006);[8] Ed. Code, § 56381, subd. (a)(2).) A school district is required to assess a child in all areas of suspected disability. As part of any reassessment, the IEP team is required to review existing assessment data and, on the basis of that data, identify what additional data, if any, is necessary to determine whether the pupil continues to have a disability, the pupil's present levels of performance and educational needs, whether the pupil continues to need special education and related services, and whether any additions or modifications to the educational program are needed to enable the pupil to meet his annual IEP goals. (Ed. Code, § 56381, subd. (b).)

[8] All subsequent references to the Code of Federal Regualtions are to the 2006 version, unless otherwise indicated.

7. A school district has the right to conduct necessary and appropriate assessments if a student intends to seek the benefits of the IDEA and receive special education and related services from the school district. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1315; *Andress v. Cleveland Indep. Sch. Dist.* (5th Cir. 1995) 64 F.3d 176, 178.)

8. An IEP required as a result of an assessment shall be developed within a total time not to exceed 60 days from the date the District received the executed consent for assessment, unless the parent agrees, in writing, to an extension, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays. (Ed. Code, § 56344.)

9. School districts are required to have an IEP in place for each eligible child at the beginning of each school year. (34 C.F.R. 300.323(a); Ed. Code, § 56344, subd. (c).) An IEP must be reviewed at least annually to determine whether the annual goals are being met, and at that time, the school district must revise the IEP as appropriate to address any lack of expected progress, new assessments, information provided by parents, the child's anticipated needs, or any other matter. (34 C.F.R. 300.324(b)(1); Ed. Code, § 56343, subd. (d).)

10. 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).)

11. The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b) (2006); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) "Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan." (*Amanda J., supra,* 267 F.3d at p. 882.)

12. A parent's obstruction of the IEP process, caused by his or her unreasonable delay, can relieve a school district from its obligation to have an IEP in place at the start of the school year. (*Doe v. Defendant I* (6th Cir. 1990) 898 F.2d 1186, 1189.) In *Doe*, the student's father requested that the student, who had just completed his elementary school education, not receive special education services in junior high school until the expiration of the first six weeks of school, in order to determine how well the student progressed without special education intervention. (*Id.* at p. 1188.) In November 1986, after the six-week period, the IEP team convened and developed an IEP for the student, which provided that parents would arrange for tutoring services for the student. (*Ibid.*) The IEP did not specify who would pay for the tutoring services. (*Ibid.*) When the school district declined to reimburse parents for the tutoring services, the parents withdrew the student from the school district, claiming that the educational alternatives contained in the IEP were insufficient to provide the student with a FAPE. (*Ibid.*) Thereafter, parents enrolled the student in private school. (*Ibid.*) Parents subsequently filed, on behalf of their son, a complaint for due process seeking reimbursement for the private school tuition, as well for the tutoring services. (*Ibid.*) In the complaint, the parents claimed that, in addition to the insufficiencies contained in the IEP, the school district failed to have an IEP in place when the student began the school year, thereby committing a violation. (*Id.* at p. 1189.) As such, the parents claimed they were entitled to reimbursement. (*Ibid.*) When addressing the issue of whether the school district committed a violation by failing to have an IEP in place at the beginning of the school year, the court, citing *School Committee of the Town Burlington v. Department of Education* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996], noted that although the regulations require that an IEP be constructed at the beginning of the school year, the Act "emphasizes the participation of the parents in developing the child's educational program and assessing its effectiveness." (*Id.* at p. 1191.) Thus, the court

reasoned that an IEP should have been in place at the beginning of the school year, only after the convening of an IEP meeting, which did not occur until November, after the expiration of the six week period. (*Id.* at p. 1189.) Because the father requested that the school allow the student to perform on his own for a while, effectively delaying the process of participating in the development of Student's IEP prior to the commencement of the new school year, the court stated that the father could not now claim that the school, in honoring his request, failed to comply with the Act. (*Ibid.*) As such, the court denied the parents' request for reimbursement. (*Id.* at pp. 1189-1191.)

13. When an IEP has not been completed, due to obstruction by the parents, evidenced by their refusal to cooperate fully in the collaborative IEP process, the parents' reimbursement request should be denied. (*C.G. and B.S. v. Five Town Community School District* (1st Cir. 2008) 513 F.3d 279, 285-286.) In *C.G.,* the parents of an emotionally disturbed child met with the school district to determine their daughter's eligibility to qualify for services under the IDEA. (*Id.* at p. 282.) Before the district could evaluate the request, the student suffered a crisis, and her parents unilaterally transferred her to a private residential placement. (*Ibid.*) A year later, the school district met with the parents to resume earlier eligibility discussions. (*Id.* at pp. 282-283.) After an independent evaluator concluded that the student was qualified to receive special education services, the district scheduled an IEP meeting, and began developing an IEP. (*Id.* at p. 283.) The participants delineated the main components to be included in the IEP, and noted areas of the IEP that would require additional input from student, her therapist, and her parents. (*Ibid.*) The district scheduled another IEP meeting two weeks later, where the participants discussed placement options. (*Ibid.*) The meeting was very contentious, and the parties quickly reached an impasse. (*Ibid.*) The parents insisted that the student be educated in a therapeutic residential center, while the district insisted that a non-residential public school placement could provide the student with an

adequate and appropriate education. (*Ibid.*) The parents announced that they had decided to send the student to an out-of-state residential facility, and would seek reimbursement for the costs incurred. (*Ibid.*) The meeting never progressed to a discussion of the IEP, and how to fill the gaps in it. (*Ibid.*) The court determined that the IEP was not "final" because the parents had disrupted the IEP process midstream, and concluded that had the parents continued to cooperate and allow the school district fill in the gaps of the IEP, the result would have been a satisfactory IEP that provided the student a FAPE. (*Id.* at p. 286.) The court found that the parents harbored a fixed purpose: to effect a residential placement for their daughter at the school district's expense. (*Id.* at p. 287.) Once the parents realized that the school district was focused on a non-residential placement, they essentially lost interest, which supported an inference of parental obstruction. (*Ibid.*) The school district argued that the parents' conduct was unreasonable, and that this unreasonableness precluded relief. (*Id.* at p. 288.) The court agreed, stating that the parents' unreasonable approach to the collaborative process undermined the process. (*Ibid.*) The court concluded that the parents made a unilateral choice to abandon the collaborative IEP process without allowing that process to run its course. (*Id.* at p. 289) As such, the court concluded that the parents' unreasonable obstruction of an otherwise promising IEP process, fully justified a denial of reimbursement. (*Id.* at p. 288.)

14. Even if a public school denied a student a FAPE by failing to have an IEP in effect for student on the first day of school, equitable considerations must be weighed against parents seeking reimbursement for private school tuition costs, when parents' conduct in delaying continuation of an IEP meeting, and their conduct in canceling an assessment, substantially precluded any possibility that the school could timely develop an appropriate IEP for student. (*C.H. v. Cape Henlopen School District* (3rd Cir. 2010) 606 F.3d 59, 71.) The IDEA was not intended to fund private school tuition for the children of

parents who have not first given the public school a good faith opportunity to meet its obligations. (*Id.* at p. 72) In *C.H.*, the dispute between the parents and the school district over the provision of adequate educational resources for student had been longstanding. (*Id.* at pp. 62-63.) The parents had unilaterally withdrawn the student from the school district and placed him in a private school twice, once in 2002 and again in 2004, for which the parents sought reimbursement. (*Id.* at p. 63) Ultimately, the parties entered into a settlement agreement, where the district agreed to fund the student's private school placement for the 2005-2006 school year, and included language in the agreement stating that the school district was under no obligation to monitor the student's performance or develop an IEP for the student while he attended the private school placement. (*Ibid.*) During the 2005-2006 school year, the parents discussed with the school district student's potential return to the school district for the 2006-2007 school year. (*Ibid.*) The school district determined that it should evaluate the student, and, in May 2006, sought the parents' authorization to do so. (*Ibid.*) After initially returning an improperly completed authorization, the parents sent the school district a properly executed authorization on July 6, 2006. The school psychologist conducted the student's assessment on August 7, 2006, and completed an assessment report on August 15, 2006. (*Ibid.*) The IEP team convened on August 22, 2006, but was unable to complete student's IEP on that day. (*Ibid.*) The school district expressed a willingness to promptly schedule a continuation of the meeting, but the student's mother indicated that her travel schedule made her unavailable to meet again until after the start of the 2006-2007 school year. (*Ibid.*) The school district proposed that the meeting be continued on September 11, 2006, five days after the first day of classes. (*Ibid.*) The student's mother indicated she had a scheduling conflict on September 11, 2006, but agreed to tentatively schedule the meeting for September 11, 2006. (*Ibid.*) On September 6, 2006, the day of school, the student did not report to class at the district.

(*Id.* at p. 64.) The parents had unilaterally decided to place the student in the private school, instead. (*Ibid.*) On September 7, 2006, the parents filed a request for a due process hearing. (*Ibid.*) Despite the due process request, the district intended to proceed with the September 11, 2006 IEP meeting, and sent a letter to the private school inviting a representative to participate in the September 11, 2006 meeting. (*Ibid.*) On September 11, 2006, one hour before the scheduled meeting, the private school contacted the district, advising them that it would not be attending the meeting, because student's mother had advised the private school that she would not be attending. (*Ibid.*) The parents subsequently advised the school district that, in light of their due process complaint, they would no longer participate in IEP meetings. (*Ibid.*) In addition, the parents refused to give the district permission to conduct a speech and language assessment of student, which was necessary in order to develop his IEP. (*Ibid.*) The court concluded that District's failure to have an IEP in place on the first day of the 2006-2007 was a violation of the plain mandate of the IDEA. (*Id.* at p.68) However, the court reasoned that, under the circumstances, the violation did not impede the student's right to FAPE, or cause a deprivation of an educational benefit. (*Id.* at p. 69.) Specifically, the court noted that the district demonstrated a consistent willingness to evaluate the student and to develop an IEP for the 2006-2007 school year, evidenced by the district's psychologist assessing the student one month before the commencement of the school year, and the convening of an IEP meeting shortly thereafter. (*Ibid.*) The court further noted that although the IEP was not completed at the first meeting, it was the parents and not the district, who delayed the continuation of the meeting until after the start of classes. (*Ibid.*) The court "decline[d] to hold that a school district is liable for procedural violations that are thrust upon it by uncooperative parents." (*Ibid.*) Moreover, the court declined to hold that, as a matter of law, any specific period of time without an IEP is a denial of FAPE, absent specific evidence of an educational deprivation. (*Ibid.*)

Accordingly, the court held that the district's failure to have an IEP in place on the first day of classes did not deprive the student of a FAPE, and, concluded that reimbursement, on that basis, was appropriately denied. (*Id.* at p. 70.)

15. If a district denies a pupil a FAPE and the parents are required to spend money to remedy the situation, the parents may be entitled to reimbursement of those expenses. (*School Committee of the Town Burlington, supra, v. Department of Education* (1985) 471 U.S. at p.359, 369. [105 S.Ct. 1996].) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at the due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and that the private school was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c).) In *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13 [113 S.Ct. 361], the Supreme Court specifically exempted parents from having to meet certain requirements of the IDEA in their unilateral placements. For example, parents are not required to conform their unilateral placement to the content of the student's IEP or provide a placement where the instructors hold state-credentials. (*Ibid.*) The Court has established that the parents' placement need not meet a standard as high as school districts must meet; however, the parents' placement must still substantially comply with the IDEA, such as providing a placement that addresses the student's needs and provides the student educational benefit. (*Ibid.*)

16. Reimbursement may be denied or reduced upon a judicial finding of unreasonableness with respect to actions taken by the parents. (20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(1).)

17. Parents who do not allow a school district a reasonable opportunity to evaluate their disabled child, because of their failure to cooperate, forfeit their claim

under IDEA for reimbursement for a unilateral private placement. (*Patricia P. v. Board of Education of Oak Park* (7th Cir. 2000) 203 F.3d 462, 469.)

PROCEDURAL VIOLATION ANALYSIS

18. Here, while the IDEA required District to have an IEP in place for Student prior to the commencement of the 2008-2009 school year, the evidence showed that, despite District's reasonable efforts to assess Student, convene an IEP meeting, and make an offer of placement and services, Guardian significantly impeded the assessment and IEP process to such a degree that, not only did she make it impossible to both assess and convene an IEP meeting prior to the commencement of the 2008-2009 school year, but she also obstructed the process throughout the remainder of the 2008-2009 school year. Specifically, the evidence showed that District, which had no access to Student since June 2007, attempted to initiate the triennial assessment process as early as November 2007 by sending Guardian a proposed assessment plan. However, Guardian declined to consent to the assessment plan, claiming it was premature for a May 2008 triennial review. For the same reason, Guardian declined to attend an IEP meeting, noticed for February 15, 2008. However, after Guardian consented to the assessment plan on May 15, 2008, Guardian continued to stall the assessment process by only agreeing to make Student available after a significant passage of time between each session, and delayed the IEP process by repeatedly requesting District to cancel and reschedule noticed IEP meetings. Specifically, between May 15, 2008, and the start of new the school year in mid-September 2008, Guardian, in response to Dr. Van's August 29, 2008 request to make Student available for six hours of further assessments, advised District that she could not make Student available until September 30, 2008, when she would produce him for a thirty minute session, October 7, 2008 for a two hour session, October 14, 2008 for a one and one-half hour session, and October 21, 2008 for a two hour session. Although District requested Guardian to provide earlier dates so that

the assessment process could be completed in weeks as opposed to months, Guardian advised District she was unable to do so. Consequently, the assessment process, at that point, could not have been completed for two full months following Dr. Van's initial August 29, 2008 request, well after the commencement of the new school year.

19. Similarly, the evidence showed that Guardian and/or RLC, prior to the commencement of the new school year, significantly delayed the IEP process, as well. Specifically, District noticed four IEP meetings prior to the start of the new school year: June 19, 2008, June 27, 2008, July 11, 2008, and September 3, 2008. District, pursuant to Guardian's request, rescheduled the June 19, 2008 IEP date to June 27, 2008, and expressed a willingness to still convene, even though District employees were not contractually obligated to work beyond June 19, 2008. After RLC, who Guardian had specifically requested District invite to the IEP meeting, later advised District it could not attend the June 27, 2008 meeting, District rescheduled the meeting to July 11, 2008. When Guardian and RLC subsequently expressed, through Student's counsel, that they could not attend the July 11, 2008 meeting, District rescheduled the meeting to September 3, 2008. When RLC advised District at 4:35 p.m. on the eve of the IEP meeting, that it would not attend, because District had not agreed to pay RLC staff members $120.00 per hour, each, to attend the IEP meeting, District had to cancel the September 3, 2008 meeting. Given the above circumstances involving Guardian's protraction of the assessment process, coupled by her, and RLC's, inability or unwillingness to participate in an IEP meeting, District was unable to have an IEP in place for Student prior to the 2008-2009 school year.

20. In *Doe*, the parents delayed the process of participating in the development of Student's IEP prior to the commencement of the new school year, directing the school not to provide special education intervention to the student for the first six weeks of school, in lieu of meeting and developing an IEP to be implemented at

the start of the school year. (*Doe, supra.,* 898 F.2d at pp. 1187-1188.) Similarly, in the instant matter, Guardian, in addition to protracting the assessment process, delayed the IEP process by repeatedly canceling, rescheduling, or otherwise electing not to participate in an IEP meeting prior to the start of the new school year. The court in *Doe*, when addressing the issue of whether the school district committed a violation by failing to have an IEP in place at the beginning of the school year, noted that although the regulations require that an IEP be constructed at the beginning of the school year, the Act "emphasizes the participation of the parents in developing the child's educational program and assessing its effectiveness." (*Doe, supra.,* 898 F.2d at p. 1191.) The court reasoned that an IEP must be in place, only *after* the convening of an IEP meeting, and parents' obstruction of that process, caused by their unreasonable delay, could relieve a school district from its obligation to have an IEP in place at the start of the school year. (*Doe, supra.*, 898 F.2d at p. 1189.) Consistent with *Doe*, Guardian's participation at an IEP meeting was an essential prerequisite to the development of an IEP for Student, such that her interference with the meeting process relieved District from having an IEP in place at the commencement of the new school year. As such, there was no procedural violation by District.

21. This conclusion is supported by the rationale set forth in *C.G., supra.*, 513 F.3d 279, concerning the essentiality of parental participation in the development of an IEP prior to the start of the school year. In *C.G.*, the court found that the parents' approach to the collaborative IEP process was unreasonable, as it undermined the process when parents abruptly left in the middle of an IEP meeting, after learning the district was considering a placement other than a private residential placement. As a result, the IEP was not completed prior to the start of the school year. The court concluded that parents' unreasonable obstruction of an otherwise promising IEP process, provided solid ground for resolving the case against the parents. Similarly, in

the instant matter, Guardian, who repeatedly cancelled or rescheduled multiple IEP meetings that were set to develop Student's IEP before the commencement of school year, completely frustrated and undermined the collaborative process by her inability or unwillingness to participate in the IEP process at that time. As such, sufficient grounds exist for resolving the case against the Guardian.

22. Even if District's failure to have an IEP in place prior to the commencement of the new school year constituted a procedural violation, there is no evidence that the violation impeded Student's right to a FAPE, or caused a deprivation of educational benefit. Here, Student asserts, in essence, that District's violation of failing to have an IEP in place in a timely fashion, in and of itself, resulted in a denial of FAPE. Student submitted no specific evidence demonstrating that the violation impeded Student's right to a FAPE, or caused a deprivation of educational benefit. In *CH, supra.,* 606 F.3d 59, where the school district failed to have an IEP in place at the beginning of the new school year, the court declined to hold, as a matter of law, that any specific period of time without an IEP was a denial of FAPE, absent specific evidence of an educational deprivation. Moreover, the court found that the school district demonstrated a consistent willingness to evaluate the student and develop an IEP prior to the commencement of the school year, evidenced by the district's psychologist assessing the student one month before the commencement of the school year, and convening an IEP meeting shortly thereafter. The court then concluded that although the IEP was not completed, it was the parents and not the district, who delayed the continuation of the IEP meeting until after the start of classes. As such, the court declined to hold the school district "liable for the procedural violations that [were] thrust upon it by uncooperative parents." Similarly, in the instant matter, the evidence showed that District sent out questionnaires and rating scales to Guardian and RLC, as well as began conducting tests on Student, within two weeks of the May 15, 2008 assessment plan. In addition, District

noticed an IEP meeting as early as June 19, 2008, three months before the start of the new school year, another one on June 27, 2008, one more on July 11, 2008, and a final one prior to the school year on September 3, 2008. These actions demonstrated a consistent willingness to evaluate Student and develop an IEP prior to the commencement of the school year. The evidence further showed that, through a number of cancellations and requests to reschedule, it was mostly the Guardian, and sometimes RLC, and not District, who delayed the IEP process until after the start of the new school year. As such, District is not liable for the procedural violation forced upon it by the actions of the Guardian.

23. Similarly, District cannot be held liable for not developing an IEP and making an offer of placement and services during the remainder of the 2008-2009 school year. In addition to the actions taken by Guardian prior to the commencement of the 2008-2009 school year, the evidence showed that Guardian continued to obstruct and delay the assessment and IEP process during the rest of the 2008-2009 school year. Specifically, despite District's willingness to work around Guardian's schedule, Guardian failed to bring Student to an assessment session scheduled for October 21, 2008. Instead, Guardian rescheduled the assessment for two weeks later, to November 4, 2008. In addition, on October 27, 2008, when Ms. Merito requested an additional hour to complete her speech and language assessment, Guardian advised District that she could not do so until November 11, 2008, which was a school holiday, or November 25, 2008, or December 2, 2008, dates that were four and five weeks, respectively, after Ms. Merito's initial request. Despite the extended period, District confirmed, through a letter from Ms. Merito, the November 25, 2008 date for the speech and language assessment, and the December 2, 2008 date for an audiological assessment. Although Guardian claims that she never received the written confirmation from Ms. Merito, this claim was not credible in light of the evidence. In particular, based on Guardian's pattern of

frequently claiming that she did not receive correspondence, District resorted to sending correspondence to Guardian through multiple modes of delivery. It is simply not plausible that all modes of delivery to Guardian failed simultaneously. After District's confirmation of dates convenient to Guardian, Guardian failed to bring Student to his November 25, 2008 session with Ms. Merito, and failed to bring him to his December 2, 2008 session with the audiologist.

24. Thereafter, District requested that Guardian make Student available by December 8, 2008, to complete the assessments, which Guardian declined to do, contending the assessment plan had expired. District again requested, in January 2009, for Guardian to provide dates for District staff to complete their assessments, to which Guardian declined. As a result, District filed a due process hearing complaint on February 12, 2009, seeking an order permitting District to complete its assessments. Guardian did not make Student available for any further assessment sessions until May 2009, only after Guardian and District entered into a May 7, 2009 settlement agreement. The period from the time Student failed to appear for his November 25, 2008 and December 2, 2008 scheduled assessment sessions, to the time when Guardian made Student available for assessments in May 2009, was six months. In total, Guardian's actions resulted in nearly 10 months of delays, preventing District from ascertaining Student's present levels of performance for nearly one year. Without the updated assessment data, District could not have reasonably made an appropriate offer of placement and services at an earlier time, and given Guardian's refusal or inability to attend noticed IEP meetings during the remainder of the school year, as discussed immediately below, could not have relied on parental participation to develop an IEP appropriate for Student.

25. Guardian continued to delay the IEP process after the commencement of the 2008-2009 school year. District noticed no fewer than six IEP meetings after the

school year started: December 10, 2008, March 4, 2009, April 30, 2009, May 20, 2009, June 11, 2009, and June 18, 2009. Three of those meetings were rescheduled at the behest of Guardian or her counsel: December 10, 2008,[9] April 30, 2009, and June 11, 2009. Two meetings, June 27, 2008 and September 3, 2008, were rescheduled as a result of RLC's unavailability. One meeting, May 20, 2009, was postponed after the parties entered into the May 7, 2009 settlement agreement, and the two remaining meetings, March 4, 2009, and June 18, 2009, were attended by both parties. The evidence does not show that any of the IEP meetings were rescheduled at the behest of District. Although Guardian claims that she requested IEP meetings to be rescheduled because, on several occasions, she did not receive notice of the IEP meetings, or several other forms of correspondence from District, this testimony was implausible and not credible. The evidence showed, through the credible testimony of Mr. Adams, that, because of prior claims of not receiving District correspondence, he routinely sent notices and correspondence to Guardian via fax, first class mail, certified mail, and even personally delivered notices and correspondence to Guardian's home. It is implausible that with all of these methods of delivery, Guardian did not timely receive the IEP notices or other written communication through at least one of these modes of transmission. In addition, given the concerted efforts District made in trying to hold an IEP meeting, such as rescheduling meetings to accommodate Guardian and/or her counsel, and offering to pay RLC staff $125 per hour, per staff member, to attend an IEP meeting, it is not reasonable to believe that District would have then neglected to send appropriate notice of IEP meetings to Guardian or to any other invitee.

[9] Guardian failed to attend the December 10, 2008 IEP meeting, resulting in District rescheduling the IEP meeting.

26. Overall, the evidence showed that at all times District was using its best efforts to carry out its duty under the IDEA to assess Student and make an offer of FAPE. However, Guardian's actions during the period in question, May 16, 2008 through June 17, 2009, significantly impeded District's ability to complete Student's triennial assessments, convene an IEP meeting, and make an offer of placement and services. As such, and as set forth above, it is unreasonable to hold District responsible for the failure to have an IEP developed prior to the commencement of the 2008-2009 school year, consistent with *Doe*, *C.G.*, and *C.H.*, and it is equally unreasonable to hold District responsible for not convening an IEP meeting, developing an IEP, and making an offer of placement and services during the remainder of the school year. Student has, therefore, failed to meet his burden of demonstrating that District committed a procedural violation of the IDEA that denied him a FAPE by failing to comply with annual IEP timelines. As such, Student is entitled to no relief. Accordingly, Guardian's request for reimbursement is denied. (Factual Findings 1 - 83; Legal Conclusions 1- 26)

EQUITIES ANALYSIS

27. Even if Student had met his burden, and had proven that District denied him a FAPE by failing to convene an IEP meeting and make an offer of placement and services between May 16, 2008 to June 17, 2009, given the balance of equities when comparing Guardian's conduct with District's, Student's request for reimbursement would have been denied in its entirety. The evidence showed that District, as outlined above, made great efforts to conduct assessments, convene an IEP meeting, and make an offer of placement and services. Specifically, District frequently scheduled and rescheduled assessment sessions and IEP meetings, in an effort to accommodate Guardian, as well as RLC, and Student's counsel. In addition, District agreed to incur the expense of paying RLC staff $125.00 per hour, per staff member, to attend an IEP meeting and offer input. District also drafted and forwarded to RLC multiple

authorizations to observe Student, amid RLC's belated claims that previous authorizations had expired. Moreover, District continued its efforts to complete the IEP process, even after the filing of its due process complaint in February 2009, by convening an IEP meeting on March 4, 2009, attempting to schedule a reconvening of the March 4, 2009 IEP meeting for April 30, 2009, and noticing another IEP, prior to the May 7, 2009 settlement agreement, for May 20, 2009. However, despite District's efforts, Guardian, as outlined in great detail above, proved to be uncooperative, and was chiefly responsible for the year-long delay in which District could convene an IEP meeting, develop an IEP with Guardian's participation, and make an offer of placement and services. Guardian also demonstrated uncooperativeness by failing to advise Dr. Van, Ms. Morgan, Ms. Merito, the O.T. specialist, or any other District staff until March 4, 2009, during the ten month period that they had been assessing, or attempting to assess, Student, that Student had been attending a social skills group since July 2008. As both Dr. Van and Ms. Morgan credibly testified, they would have observed Student at his social skills group sessions, had they known that Student was receiving such services. It was unreasonable for Guardian to withhold such information, as evidenced by the credible testimony of Dr. Van. Dr. Van explained that she assumed Guardian would have volunteered all pertinent information in order to help develop a comprehensive assessment of Student. In addition, Guardian would frequently make questionable claims that she did not receive IEP notices and other correspondence from District, forcing District to adopt multiple modes of delivery to send correspondence to Guardian. Even after District began sending Guardian correspondence through fax, first class mail, certified mail, and even through personal delivery, Guardian continued to make such implausible claims. Balancing Guardian's actions against District's, it is clear that Guardian, as a whole, acted unreasonably during the entire period in which she seeks reimbursement, May 16, 2008 to June 17, 2009. She obstructed the assessment

process, the IEP process, was dishonest about receiving District correspondence, withheld pertinent information, and otherwise thwarted District's efforts to assess Student, conduct an IEP meeting, develop an IEP, and make an appropriate offer of placement and services. For these reasons, Guardian's request for reimbursement is denied. (Factual Findings 1 - 83; Legal Conclusions 1 - 27)

ORDER

Student's request for relief is denied.

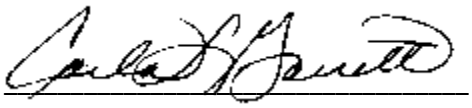
PREVAILING PARTY

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. Here District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

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

DATED: September 23, 2010



CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings