

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100446

DECISION

Alexa J. Hohensee, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on May 29, 30, and 31, 2012, in Los Angeles, California.

Student's father (Father) and mother (Mother) (jointly, Parents) represented Student. Father and Mother attended all three days of hearing.

Assistant General Counsel Donald A. Erwin, represented the Los Angeles Unified School District (District). District representative and Due Process Coordinator, Diana Massaria, attended the hearing on May 29, May 30 and the second half of May 31, 2012. Special Education Coordinator, Julie Hall-Panameno, attended the first half of the hearing on May 31, 2012.

Parents, on behalf of Student, filed the request for due process hearing (complaint) on October 13, 2011. OAH granted the parties' joint requests to continue the hearing for good cause on October 20, 2011, February 15, 2012 and March 9, 2012. At the end of the hearing, the parties presented oral closing arguments, and the record was closed on May 31, 2012.

ISSUES

1. Whether District failed to offer Student a free appropriate public education (FAPE) in the individualized education program (IEP) dated June 2, 2011, by:
 - (a) Failing to completely and sufficiently assess Student prior to the IEP;
 - (b) Failing to provide the IEP team with accurate descriptions of Student's present levels of academic performance;
 - (c) Failing to develop measurable annual goals to address Student's needs;
 - (d) Failing to offer adequate behavioral support for Student in the classroom;
 - (e) Failing to offer appropriate speech and language services to meet Student's needs;
 - (f) Failing to offer appropriate assistive technology services to meet Student's needs;
 - (g) Failing to offer services for 50 weeks of the calendar year.¹

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND INFORMATION

1. Student was 12 years old at the time of the hearing, and in the sixth grade for the 2011-2012 school year. Student has lived within the boundaries of the District since January 2009, and is eligible for special education as a child with a specific learning disability (SLD).

¹ The issues for hearing in Student's complaint were verified with Parents at a prehearing conference and have been restated for the purpose of clarity. The IEP is dated June 2, 2011, but was developed over two IEP team meetings convened on June 2, and June 15, 2011.

2. Student is an English language learner. He speaks Spanish at home with his parents, and English is his primary language at school.

3. From kindergarten through fifth grade, Student attended eight schools in two school districts. Student changed schools mid-year in second grade, in third grade, in fourth grade (three times) and in fifth grade, and missed class time and lesson components when these school and classroom changes occurred. All of these changes, except the one in fifth grade, were initiated by Parents.

2010-2011 SCHOOL YEAR

District's Triennial Assessments

4. Pursuant to an IEP dated January 21, 2010, Student began his 2010-2011 fifth grade school year at Ann Elementary School (Ann Elementary) within the District, in a general education classroom, with resource specialist (RSP) services in mathematics for 50 minutes one time per week, RSP services in reading for a total of 50 minutes in one to five sessions per week, RSP services in writing for 50 minutes one time per week, and language and speech (LAS) services for 30 minutes one time per week. At that time, Student was eligible for special education as a student with a speech language impairment (SLI), due to difficulties with expressive language.

5. In preparation for Student's upcoming triennial IEP team meeting, the District prepared, and Parents consented to on October 13, 2010, an assessment plan for evaluations of Student in the areas of health and development, general ability, academic achievement, social/emotional, speech and language skills, and fine and gross motor skills. The plan provided that the various assessments would be performed by designated members of the District's staff in their areas of expertise.

6. School psychologist Stacy Copeland Weiss prepared a comprehensive triennial Psychological Assessment Report on November 17, 2010. Her report included information from formal testing she conducted on Student, as well as health information

gathered by the school nurse, results of academic testing performed by Student's RSP teacher, and results of LAS testing performed by District speech therapist Lea Varias-Wong.

7. Ms. Copeland Weiss earned a bachelor's degree in psychology in 1997, and a master's degree in pupil personnel services in 2000. She holds a credential in pupil personnel services in school psychology, and has worked as a school psychologist with the District for the last 10 years. Her duties as a school psychologist include conducting assessments and attending IEP team meetings, and she has completed between 300 and 500 psychological assessments and has attended as many IEP team meetings. She has assessed elementary school children with specific learning disabilities, autism, mental retardation, and other disabilities. In November 2010, she was knowledgeable concerning Student's known and suspected disabilities, qualified to perform the assessments conducted, and was able to give special attention to the student's unique educational needs when conducting the assessment.

8. Ms. Copeland Weiss did a comprehensive review of Student's educational records, and noted Student's frequent school changes. She concluded that these school changes, and an overall record of poor attendance, could have a very detrimental effect on achievement. Changes in schools, and even classrooms, may result in missed lessons on core building blocks of the curriculum. She also reviewed Student's previous assessments, which reported that Student demonstrated low average general abilities, with delayed expressive language skills and average receptive language skills. Her review of previous IEP's showed that Student's eligibility category had changed from SLD to SLI, and that Student historically received RSP and/or LAS services.

9. Ms. Copeland Weiss observed Student in his general education classroom, where he read a Batman book during a class lesson, and followed the teacher's directions inconsistently. She interviewed Parents at her office, and they reported that

Student tantrummed, yelled, kicked, hit walls and made inappropriate comments at home, which behavior had not been seen at school.

10. Ms. Copeland Weiss administered the following tests to Student: the Cognitive Assessment System (CAS), the Motor-Free Visual Perception Test – Third Edition (MFVPT), the Test of Auditory Processing Skills – Third Edition (TAPS), the Behavior Assessment System for Children – Second Edition (BASC-II), and the Barkley Disruptive Behavior Rating Scale (Barkley). She chose these test instruments to provide information on Student’s cognitive abilities, cognitive performance and behaviors to determine if Student required special education and related services. Several of these tests used numbers and non-verbal reasoning and included non-verbal subtests. Ms. Copeland Weiss spent over three hours one-on-one with Student during testing, and Student was cooperative, friendly, demonstrated adequate focus and attention, and appeared to give his best effort. Based on the conditions and her administration of the tests, Ms. Copeland Weiss concluded that the results were valid.

11. On the CAS, which tests cognitive ability, Student scored in the average and low average range in planning processes (strategies, control of behavior, self - monitoring), in the low average range for simultaneous processing (relating parts into a group or whole, understanding relationships between pictures and words, spatial relationships), in the average range on attention (ability to attend and concentrate), and in the low average range on the successive scale (ability to work with information in a linear order). On the TAPS, Student scored in the average and low average ability range in multiple auditory skills, but below average in auditory reasoning and auditory processing. Student displayed strength in visual perception (math computation, math reasoning) and basic reading and spelling skills.

12. Academic testing by the RSP teacher and reported to Ms. Copeland Weiss placed Student in the average range for calculation, math fluency, spelling, writing fluency and writing samples, and in the low average range for letter-word identification,

reading fluency, story recall and applied problems. Student's understanding of directions and passage comprehension was below average, and delayed story recall was well below average. On classroom assessment data from the Open Court Reading (OCR) program, Student's language arts abilities were largely in the below to low average range when compared to his general education classroom peers. Quarterly classroom assessments placed Student in the low average to below average range in mathematics abilities. On 2009-2010 California Standardized Testing, Student scored basic in math and below basic in English language arts (ELA). In the third semester of fourth grade, Student had received achievement grades of proficient and partially proficient.

13 On the BASC-II questionnaire completed by Student's general education teacher, Student received "at-risk" scores, denoting presence of concern, in adaptability, social skills, leadership (working well under pressure, chosen to lead) and functional communication. The general education teacher also completed the Barkley, and her responses indicated that Student did not demonstrate inattentive, hyperactive/impulsive, oppositional or defiant behaviors to a significant degree. Student's teacher reported that Student has good peer relations, good behavior in the classroom and on the playground and adequate task organization skills, but demonstrated difficulty concentrating and needed improvement in independent work habits and task completion. Student also completed the BASC-II, and reported having lots of friends and playing sports, but that he disliked getting up for school and writing. Parents reported on the BASC-II that Student has normal social skills, but tantrums when he does not get his way and can't sit still, and they worried that he was not achieving academically at the level of his peers. Mother completed the BASC-II, and rated Student at-risk for hyperactivity, withdrawal, attention problems and leadership, and clinically significant for atypicality, social skills, activities of daily living, and functional communication. Mother's responses received a "caution" score on the BASC-II's consistency index, indicating random responses that might be invalid. Mother's Barkley responses were consistent

with responses by Student's teacher, and indicated that Student did not have behaviors associated with ADHD. Ms. Copeland Weiss concluded that Student displayed adequate social emotional functioning, although he should be monitored for social skills, leadership and functional communication.

14. Student, as an English language learner, was at an "intermediate" English language development (ELD) level at the time of assessment. Ms. Copeland Weiss noted that Student followed directions with prompting and assistance, was able to express his needs, spoke in simple sentences, and used a basic level of vocabulary in the classroom.

15. In the area of fine and gross motor skills, Ms. Copeland Weiss observed that Student demonstrated age appropriate fine and gross motor skills, and Student's teacher reported that his motor skills were adequate.

16. In a health evaluation of Student by the school nurse, also included in Ms. Copeland Weiss' report, Student passed the vision screening and was found to be independent in activities of daily living. The report also noted that a physical exam of Student by a private physician in August 2010 had normal results, and that although the District had attempted audiological testing, a build-up of wax in Student's ears prevented testing until a physician could remove the blockage, and Student had not returned to the District's audiologist.

17. Ms. Copeland Weiss concluded that Student had a severe discrepancy between his cognitive ability and achievement in the area of reading comprehension, with weakness in cognitive expression, association and conceptualization, and met the eligibility criteria for SLD. She noted that Student's history of multiple school enrollments and poor attendance could not be ruled out as having negatively impacted his educational performance. She recommended a variety of educational supports typically found in a small SLD special day class (SLD/SDC), such as a high adult to student ratio, presentation of material in small steps, daily review of material taught, a

structured environment and use of instructional strategies appropriate for an English language learner.

18. Ms. Copeland Weiss testified in detail about her observations of Student, the results of the formal testing she conducted, the information she had gathered from District staff, and how this information supported the conclusions in her report. Ms. Copeland Weiss is an experienced school psychologist, appeared knowledgeable and sincere in her testimony, and testified persuasively that she had obtained a comprehensive understanding of Student's abilities, academic achievement and functional performance. Her testimony regarding Student's abilities, academic achievement and functional performance was given great weight.

19. Also in preparation for Student's triennial IEP, District speech-language pathologist Lea Varias-Wong completed a comprehensive re-evaluation of Student to determine whether Student continued to qualify for special education as a student with SLI.

20. Ms. Varias-Wong earned a bachelor's degree in speech and language pathology and audiology in 2000, and a master's of science in speech and language pathology in 2002. She possesses a California credential in speech and language pathology. Ms. Varias-Wong has worked as a speech pathologist in elementary school settings for the past seven years, and has been employed by the District as a speech-language pathologist (speech pathologist) for the last three years. Her job duties include facilitating improved communication skills, screening for potential language and speech impairments, consulting with teachers, assessing and evaluating students, developing LAS therapies, observing students in the classroom, and providing LAS services in a variety of different ways (push-in, pull-out, individual, small group). She has conducted approximately 200 LAS assessments and attended as many IEP team meetings. Ms. Varias-Wong was Student's speech therapist at Ann Elementary from September 2010 through December 2010. In November 2010, she was knowledgeable concerning

Student's known and suspected disabilities, qualified to perform the assessments conducted, and was able to give special attention to the student's unique educational needs when conducting the assessment.

21. In preparation for her assessment of Student, Ms. Varias-Wong looked at Student's scores on the California English Language Development Test (CELDT), his academic history, teacher reports, and prior assessments. She also spoke to Student's general education teacher and observed Student twice in the classroom. Student had a history of meeting his language goals, and his LAS services had been reduced to 30 minutes per month in the IEP of January 21, 2010. As of the fall of 2010, Student's current teacher reported that Student was starting to fall behind academically, and to have difficulty with auditory comprehension and oral language expression. Ms. Varias-Wong observed that Student was able to recall past events, answer questions, and express daily wants and needs, and to follow simple teacher directions, sometimes requiring repetition of commands. He watched and imitated peer actions to follow classroom directions and routines, and engaged in appropriate verbal interactions with peers, although Ms. Varias-Wong concluded that the length and appropriateness of Student's responses to peer and teacher questions were often too brief.

22. Ms. Varias-Wong administered the Oral and Written Language Scales (OWLS), on which Student demonstrated a deficit in both receptive and expressive language. She also administered the Expressive One-Word Picture Vocabulary Test (EOWPVT) to Student to give an indication of the extent of his English speaking vocabulary, and his score demonstrated an expressive language vocabulary deficit. She attempted to administer the Spanish-Bilingual edition of the EOWPVT to assess Student's Spanish vocabulary, but Student responded in English. Student had inappropriate word order in his sentence patterns, such as "Today I went to the party of my friend's birthday," and frequently asked for help with descriptive words. She chose these assessment instruments used to elicit information on Student's speech and

language abilities and needs, and to determine whether Student required special education with LAS services. Ms. Varias-Wong found that Student's language skills were not meeting grade level requirements.

23. Ms. Varias-Wong reported that Student was able to answer questions appropriately, give and follow directions, and communicate using mostly phrases and simple sentences, and was 100 percent intelligible. However, his expressive vocabulary, receptive and expressive language abilities were below normal limits for him to access and participate fully in the general education curriculum. She found him to meet the eligibility criteria for special education under the category of SLI, and recommended LAS services.

24. At hearing, Ms. Varias-Wong testified persuasively concerning her observations of Student both during therapy and in the general education classroom, the formal testing she had conducted, and how the information that was gathered from records and District staff supported the conclusions in her language assessment. Ms. Varias-Wong is an experienced school speech pathologist, appeared knowledgeable and sincere in her testimony, and testified persuasively that she had obtained a comprehensive understanding of Student's language abilities. Her testimony regarding Student's language abilities, and his language needs in the school setting, were given great weight.

25. In Ms. Varias-Wong's opinion, Student did not need, and would not benefit from, assistive technology or other communication devices. She explained that assistive technology such as voice output devices or picture communication devices could assist a pupil in communicating wants and needs, but that Student was completely verbal, and could make his wants and needs known using oral language and was interacting with peers appropriately.

The December 7, 2010 IEP Team Meeting

26. The District held an IEP team meeting on December 7, 2010, at which Parents were present.

27. Prior to the December meeting, Ms. Copeland Weiss reviewed her report and recommendations with school psychologist Barbara Keyser, who presented the triennial psychoeducational assessment report to the December 7, 2010 IEP team. Ms. Keyser relayed the finding that Student qualified for special education services in the category of SLD, as well as Ms. Copeland Weiss' recommendation that Student be educated in a small, structured environment where information could be presented in small steps, using multiple presentation modalities, with daily review of material, and use of frequent feedback, praise and encouragement. A copy of the triennial psychological assessment was provided to Parents.

28. Ms. Varias-Wong reviewed her language and speech assessment of Student with the IEP team, and her conclusions that Student met the eligibility criteria for a student with SLI and required 30 minutes per week of LAS services. She proposed a language goal that Student would produce sentences using grade level vocabulary related to the core curriculum and appropriate syntax (irregular verbs, past tense verbs, progressive verbs, prepositions, and pronouns) with 80 percent accuracy in four out of five trials with moderate cuing, which was adopted by the IEP team. Parents did not request further LAS assessment or assessment of Student in any other area of suspected disability.

29. At the December 7, 2010 meeting, the IEP team found Student eligible for special education as a student with SLD, and offered placement at Glen Alta Elementary School (Glen Alta) in a general education curriculum SLD/SDC, with direct LAS services 30 minutes one time per week. Student was not offered RSP services because small group instruction and academic supports were included in the SLD/SDC program, which contained approximately six students, a credentialed teacher and a teacher's assistant.

The IEP contained goals in reading, prevocational/work habits, writing/ELD, math and language. Transportation was offered between Student's home school and Glen Alta. Parents consented to the December 7, 2010 IEP.

Parents' Privately Obtained Assessments and District's Review

30. After the IEP team meeting, Parents had Student assessed by clinical psychologist John Ayvazian, Ph.D., who did not appear or testify at the hearing, to determine if Student had ADHD or general anxiety that was impairing Student's progress in school and social behavior. Dr. Ayvazian's report, dated December 29, 2010, stated that Dr. Ayvazian relied exclusively on the statements of Mother and Father for (i) Student's history of motor, language and adaptive behavior development, (ii) Student's family, educational and environmental history, and (iii) Student's "symptoms," which included difficulties in problem solving, speech, language, math, dressing, finding his way around places where he has previously been, distractibility and maintaining attention, forgetfulness, inability to follow instructions, odd movements, rocking back and forth while watching television, unusual walk, balance problems, excessive fatigue, being shy and withdrawn, and acting without considering the consequences. Parents reported that they had not seen any sensory problems.

31. Dr. Ayvazian's report indicated under "Mental Status Examination" that Student demonstrated a fair fund of knowledge, fair concentration and attention span, memory that could not be assessed without formal testing, good mood and affect, friendly but shy attitude and behavior, and that Student "might be in the mentally retarded range of intellectual functioning" which could not be confirmed without formal testing. The report concluded that Student does not interact in an age-appropriate level, and had unsophisticated speech in terms of ideas and interaction. Dr. Ayvazian provisionally diagnosed Student with mild mental retardation and autism "per history." In his report, Dr. Ayvazian declined to make firm diagnoses or recommendations

regarding Student's educational program until and unless he had an opportunity to review Student's IEP.

32. On March 3, 2011, Parents took Student for a psychological evaluation by Larry E. Gaines, Ph.D., who did not attend or testify at the hearing. Dr. Gaines' report stated that the evaluation was specifically limited to assessment of developmental disabilities, including mental retardation and autism, and was based upon an interview with Parents, a review of Dr. Ayvazian's report, and administration of the Wechsler Intelligence Scale for Children – IV (WISC), the Beery-Buktenica Developmental test of Visual-Motor Integration (Beery VMI), the Autism Diagnostic Observation Scale Module 3 (ADOS) and the Vineland Adaptive Behavior Scale Second Edition (VABS).

33. Without explanation for the discrepancy, Dr. Gaines' report listed WISC scores on its last page, but discussed results from administration of the Leiter International Performance Scale – Revised (LIPS) in the body of the report.² Dr. Gaines reported that, on the LIPS, Student had scored in the low-borderline to mild range of mental deficiency, with strength in abstract, associational thinking. Student's language skills on the VABS fell within the mild range of deficiency, because although he could talk in sentences, engage in conversation and describe his point of view, Parents

² School psychologist Seble Gebremedhin testified that she had not seen the last page of Dr. Gaines' report, with the list of WISC scores, prior to the hearing. However, she testified that the new score information did not change her opinion of the report, as the WISC scores were not analyzed in the body of the report, and no scores were provided for the LIPS results upon which Dr. Gaines' conclusions were based. Whether Parents failed to provide the last page of the report to the District, or the District misplaced it, is irrelevant in light of Ms. Gebremedhin's testimony that the inclusion of WISC scores in the report adds no support to the discussion of the LIPS results and fails to clarify which of the tests were used or if any of the results were reported in error.

reported that Student was forgetful, had trouble describing experiences, and was sometimes off-topic, which the report concluded was consistent with delays in cognitive functioning. Student's social skills fell in the "mild range of performance" on the VABS, and the report attributed Student's reported distraction and agitation when he does not know how to do his school work as suggesting learning difficulties rather than ADHD. Student's visual motor and perceptual skills were reported in the low-average range on the Beery VMI. On the ADOS, Student engaged in basic conversation with coordinated gesture and eye contact, and although the content "did not reflect a lot of sophistication," the report ruled out Autistic Disorder. Dr. Gaines diagnosed Student with mild mental retardation, and concluded that Student was functioning in the low-borderline to mild range of mental deficiency. Dr. Gaines recommended that Student participate in a special education program, would benefit from behavioral support "as needed," and would benefit from eventual transition to life skills training.

34. On or about April 2011, Parents provided copies of the privately obtained reports by Dr. Ayvazian and Dr. Gaines to the District. The District's school psychologist, Seble Gebremedhin, reviewed the reports and an IEP team meeting was scheduled for May 2, 2011 to re-evaluate Student's IEP in light of the new information. Parents also complained to the District that Student was being excessively punished in the SLD/SDC for lack of attention to task and lack of participation, and District scheduled the IEP team to also consider the creation and implementation of a behavior support plan (BSP).

35. Ms. Gebremedhin has a bachelor's degree in psychology and a master's degree in counseling and school psychology, and holds a pupil personnel services credential in school psychology. She has been employed by the District as a school psychologist for 17 years, and has performed over 1,000 assessments, and attended over 1,000 IEP team meetings, for students with a wide range of disabilities, including autism, mental retardation, and specific learning disabilities among others. In addition to assessments and IEP participation, her duties as a school psychologist included:

counseling; individual and small group counseling on grief, stress management and behaviors; and performing functional behavior analyses and developing BSP's for students with behavioral issues.

36. Ms. Gebremedhin reviewed the two privately obtained psychological reports, as well as Ms. Copeland Weiss' triennial psychological report from November 2010. Ms. Gebremedhin also spoke with Ms. Copeland Weiss and the RSP teacher who had conducted the academic testing for Student's triennial IEP.

37. Ms. Gebremedhin noted that Dr. Ayvazian's report was based exclusively on Parents' anecdotal report of Student's abilities and an informal observation of Student in a clinic setting. Dr. Ayvazian did not observe Student in the school setting, did not conduct any standardized testing, and did not review any of Student's educational records. It was Ms. Gebremedhin's opinion that Dr. Ayvazian's suspicion that Student was mentally retarded was insufficiently supported.

38. Ms. Gebremedhin noted that, similarly, Dr. Gaines had failed to conduct a school observation, and although he used test instruments based upon adult questionnaires, he obtained responses only from Parents, and not District staff. Dr. Gaines did not have Student's educational records, and his report failed to address Student's history of school changes and absences or their potential impact on Student's academic progress. Dr. Gaines' report on cognitive function was internally contradictory, stating that Dr. Gaines had administered the WISC, but discussing results of a LIPS, rendering it impossible for Ms. Gebremedhin to know what test or tests had been used or to interpret the results.

39. Ms. Gebremedhin interviewed Student's new SLD/SDC teacher at Glen Alta, Mary Lizarde, who was concerned about Student engaging in off-task behavior, task avoidance, and disrespectful conduct. Ms. Gebremedhin observed Student in his classroom for 30-45 minutes, where he worked for a while in a small group, listened to teacher instruction, was on task, and later performed his work individually. On the

playground at recess, she observed Student interacting with peers appropriately and playing games with other students, and did not note any social issues. She concluded that Student's off-task, but non-disruptive, behavior had not been noticed in a large general education classroom, but that it was being promptly identified and addressed in a small SDC classroom, which Student apparently perceived, and reported to his father, as "punishment."

40. Ms. Gebremedhin developed a behavior goal to address the concerns of Student's teacher and Parents, that Student "will remain seated, focused and attend to task during teacher directed lessons, small group and/or independent study time in three out of four trials with 75% accuracy as measured by the teacher(s)," with incremental objectives that provided for fading out of teacher verbal and non-verbal cues. She then developed a BSP to address off-task behavior, lack of attention, and failure to complete work over a range of tasks from easy to difficult, as well as disrespectful conduct. The BSP provided positive behavior interventions for the teacher to use to help Student stay on task, such as saying "5 more minutes" as a reminder of an upcoming transitions and using gestures to communicate with Student rather than verbal reprimands. The proposed BSP noted that Student would become confrontational when a task was difficult, and provided strategies to replace problem behaviors with appropriate peer and adult interaction and positive reinforcement designed to help Student complete tasks, reduce inappropriate behaviors, and be successful in the classroom.

41. Ms. Gebremedhin met with Parents prior to the May IEP team meeting. Ms. Gebremedhin expressed a number of concerns regarding the private reports and told Parents that, in her opinion, the reports did not establish that Student was mentally retarded or had autism, and did not warrant a change in Student's eligibility or educational services. She also went over her proposed BSP with Parents.

The May 2, 2011 IEP Team Meeting

42. An IEP team meeting was held on May 2, 2011. Parents attended. Ms. Gebremedhin discussed both private psychological reports, and opined that those reports were fundamentally flawed and failed to provide reliable information on Student's cognitive abilities or the impacts of his disability on his access to the general education curriculum. She told the team that the District's triennial psychological assessment had been comprehensive, was less than six months old, and that the results of the District's assessment were still valid and supported Student's placement in a general education SLD/SDC classroom. Parents disagreed, and told the IEP team that they believed the two private reports showed that Student was unable to work at grade level. In light of the lack of support for the private reports' conclusions, the reports' failure to address Student's academic achievement or functional behavior in the school setting, and the current information available to the IEP team, the team decided that no new psychoeducational assessment was necessary to determine Student's disability or the services required to address Student's unique educational needs.

43. The May 2, 2011 IEP team, discussed Ms. Gebremedhin's presentation of the reports by Drs. Ayvazian and Gaines, her recommendation against a change in eligibility from SLD, placement or educational services based upon those reports, her proposed behavior goal and BSP, and Parents' concerns. In reliance upon the information available to the team and Ms. Gebremedhin's analysis and opinions, no changes were made to Student's program or services except for adoption of the behavior goal and the BSP. Although Parents disagreed with Ms. Gebremedhin regarding Student's eligibility, they consented to the May 2, 2011 IEP.

44. After the May 2, 2011 IEP team meeting, the District discovered that it had not documented the discussion of the Ayvazian and Gaines reports in the IEP, and scheduled a June 2, 2011 IEP meeting to re-review and document discussion of those reports. In addition, the speech therapist at Glen Alta, Maria Clark, reported that Student

had already met the language goal in his December 7, 2010 IEP, and the District arranged to develop a new language goal or goals at the June 2, 2011 meeting as well. Student had missed several sessions of LAS services before Ms. Clark replaced a speech therapist on maternity leave, and the June IEP team was charged with calculating compensatory LAS services owed.

45. The BSP was implemented pursuant to the May 2, 2011 IEP, but Parents complained shortly thereafter that Student was still being unduly punished in his SLD/SDC classroom for lack of participation and off-task behavior, which Parents again attributed to Student's inability to do the work. The District assigned Glen Alta's assistant principal and elementary instruction specialist, Elena Reynoso, who had been present at the May IEP team meeting, to update Student's present levels of performance (PLOP's) for the June IEP team meeting, and to investigate the Parents' complaints.

46. Ms. Reynoso has bachelor's degrees in bilingual education and general education, a master's in administration, and credentials in administration, bilingual education and special education. She was an elementary school teacher from 1983 through 2000, as well as a bilingual education coordinator. She has been an elementary school assistant principal and elementary instruction specialist with LAUSD since 2000, and in that position participates in student study teams and IEP's to develop strategies and interventions to address at-risk behavior. She has attended over 1,500 IEP's during her career, many of them concerning SLD students.

47. To prepare Student's PLOP's, Ms. Reynoso observed Student in the SLD/SDC classroom, reviewed previous assessments, reviewed California standardized testing and informal teacher reports, and spoke with Student's SLD/SDC teacher, Ms. Lizarde. Student was reading with fluency, but having trouble with comprehension at his grade level. In math, Student lacked number sense skills to solve word problems, although he had memorized multiplication tables and had achieved average scores in broad mathematics and calculations. In the area of prevocational/work study habits, she

observed that Student had some difficulty staying focused and finishing tasks, and needed frequent prompting from his teacher. Student also had difficulty expressing himself, and was beginning to demonstrate disrespect for peers and adults and an unwillingness to complete assignments. Student had not met his writing benchmarks, and although he had some grade level skills in written expression, brief writing and organizing his ideas into paragraphs, he still required a lot of prompting and writing support. Ms. Lizarde reported that Student was making progress on his academic goals, although he continued to need her personal attention and the teaching strategies of a small SLD/SDC classroom.

48. Ms. Reynoso has almost 20 years of experience as an elementary school teacher, with 15 of those years in special education. She testified knowledgeably and persuasively regarding Student's academic and prevocational/work study needs as gleaned from her records review, observations of Student, interview with his SLD/SDC teacher and Parents' stated concerns at the IEP team meetings she attended, and her testimony was given great weight.

49. Ms. Reynoso also worked with Ms. Gebremedhin to refine Student's goals in prevocational/work habits and behavior. In light of Student's upcoming transition to sixth grade, and possibly a middle school environment, Ms. Reynoso and Ms. Gebremedhin worked with Stavroula Matkovic, District's least restrictive environment (LRE) specialist, to prepare for the June 2, 2011 IEP team meeting with proposed placements for Student and behavioral services to support that transition.

50. Ms. Matkovic obtained her bachelor's degree in psychology in 1979, and a master's degree in administration in 2008. She has California credentials in multiple subjects, severely handicapped (moderate severe), learning handicapped (mild moderate) and administration, and a resource certificate. She has worked for LAUSD for over 30 years, in programs from preschool to high school, and prior to becoming an LRE specialist two years ago, was a program specialist responsible for placing students in

correct programs, knowing both alternate and core curriculums, visiting school sites to become familiar with programs and classrooms, and providing professional development to teachers. As an LRE specialist, Ms. Matkovic is responsible for “bridging the gap” between general education and special education to make sure that students are educated in the LRE. Depending on their individual needs, she opens and closes special education classes, oversees compliance with special education requirements, follows up on parent complaints, and participates in informal dispute resolution. Ms. Reynoso had originally recommended the SLD/SDC class at Glen Alta to Student’s December 2010 IEP team, and had met with Parents and observed Student in his classroom several times between April and June 2011 in response to Parents’ complaints that Student was being unduly punished by his SLD/SDC teacher.

51. Prior to the June 2, 2011 IEP team meeting, Ms. Matkovic was familiar with the sixth grade SLD/SDC programs at both Glen Alta and El Sereno Middle School (El Sereno). Glen Alta had an SLD/SDC classroom for sixth grade students, which was unusual for an elementary school, but Ms. Matkovic was comfortable recommending either the elementary SLD/SDC at Glen Alta or the middle school SLD/SDC at El Sereno for Student, and arranged for Father to visit both classrooms. Father already had a daughter at El Sereno and liked the school, which was the family’s home middle school, and he expressed a preference for El Sereno to Ms. Matkovic.

52. Ms. Matkovic observed the Glen Alta SLD/SDC classroom twice. The first time, Student was not present, but the second time Student was there and Ms. Matkovic observed for about 3 hours (half a day). She met with Ms. Lizarde to discuss the proposed BSP, and formed an opinion that Student had not been doing his work in the general education classroom before he transferred to Ms. Lizarde’s small SLD/SDC class, which included six students, a teacher and an adult teaching assistant (a three to one student to adult ratio), and now that Student could not hide being off-task he had begun displaying behaviors to avoid class work. During her observation, Student was

on-task and doing his work, both before and after recess, and was fairly well behaved. She noted that Student answered questions and did what was asked by the teacher, and saw that Ms. Lizarde and her classroom assistant re-directed, prompted, and provided positive reinforcement to Student in accordance with the BSP. Another specialist sent to observe Student in his classroom reported that Student was disrespectful to his teacher, which disrespectful behavior was not seen by Ms. Matkovic. Ms. Lizarde reported to Ms. Matkovic that Student was very capable. Ms. Matkovic observed that Student was a large boy with a more mature attitude and demeanor than most elementary school students, and felt that Student could fit in well on a middle school campus with an appropriate program and access to typically developing peers.

53. Ms. Matkovic testified knowledgeably regarding the programs available to Student, and persuasively regarding Student's behavioral needs, the appropriateness of the SLD/SDC classroom at El Sereno, the BSP, and the behavior support services offered. Ms. Matkovic had met many times with Parents, and had spoken with them over the telephone, and testified persuasively regarding the District's awareness of Parents' concerns and efforts to address those concerns with appropriate behavior support. Ms. Matkovic's opinions were also consistent with those of Ms. Gebremedhin and Ms. Reynoso, and her testimony was given great weight.

54. In preparation for the June 2, 2011 IEP team meeting, Student's new speech therapist, Maria Clark, prepared Student's language PLOP's and a proposed language goal.

55. Ms. Clark has a bachelor's degree in communication disorders, and a master's degree in speech pathology. She has a state license and a clinical rehabilitative credential in speech pathology, and has been a speech-language pathologist with the District for 18 years. Her duties as a speech and language pathologist include screening to determine if a child needs speech therapy, assessing for eligibility for LAS services, providing LAS therapy, collaborating with teachers to reinforce LAS therapy in the

classroom and with parents to reinforce therapy in the home, and determining what LAS therapy is necessary to help students to access the curriculum in an academic setting.

56. Ms. Clark spoke with Ms. Lizarde regarding Student's academic needs, reviewed Student's previous LAS and psychological assessments, reviewed Student's previous IEP, reviewed Student's LAS service logs and relied upon her own sessions with Student in reporting Student's language PLOP's and determining Student's language needs. Ms. Clark determined that Student lacked sufficient expressive vocabulary, but that his vocabulary was consistent with his ELD level. Student's grammatical errors were to be expected in an English language learner, but she noted that these errors caused Student frustration and made it difficult for him to respond to more complex questions. Ms. Clark noted that Student had met his prior language goal, to produce sentences using grade level vocabulary related to core curriculum and appropriate syntax with moderate cuing, but was concerned that Student's grammatical errors and poor vocabulary significantly affected the flow of conversational speech and impacted his ability to participate in oral language classroom activities. Ms. Clark prepared a draft goal that Student would use complete and correct sentences when responding to a variety of WH questions [who, what, when, where, why] with 80 percent accuracy four out of five times. She also drafted two objectives, with Student first (i) meeting his prior annual goal with minimal, rather than moderate, cuing, and then (ii) meeting the proposed goal with moderate cuing until mastery. The prior goal had focused on Student's ability to speak correctly, that is, on correctly placing nouns and verbs in sentences and increasing vocabulary, but her proposed goal shifted the focus to Student's need for comprehension of language. She did not believe that Student required assistive technology to communicate, as he was verbal and interacted with his classmates.

57. Ms. Clark testified knowledgeably and persuasively concerning Student's language abilities and language needs in June 2011. Her testimony concerning Student's language abilities and needs was given great weight.

June 2, 2011 IEP Team Meeting

58. An IEP team meeting was held on June 2, 2011. The meeting was attended by Glen Alta principal Thomas Kaminski, Glen Alta assistant principal and instructional specialist Elena Reynoso, Student's SLD/SDC teacher Mary Lizarde, SL pathologist Maria Clark, LRE specialist Stavroula Matkovic, RSP teacher Mary DeMaree, Parents, interpreter Yvette Sandoval, and Regional Center representative Ann Bonilla.

59. Ms. Reynoso presented Student's progress on his goals and updated academic PLOP's. Parents were given an opportunity to voice their concerns regarding the PLOP's, Student's current academic goals, or the measurability of those goals, but did not voice any disagreement. Ms. Gebremedhin repeated her presentation of the privately obtained psychological evaluations from the May 2, 2011 IEP team meeting for discussion and documentation in the IEP notes. It was still her opinion that the District's psychoeducational assessment of Student from November 2010 was valid, that the private assessments provided little or no information regarding Student's educational needs, and that Student's placement and services were appropriate. In reliance on her analysis and opinions, the June 2, 2011 IEP team found that Student continued to be eligible for special education as a student with SLD, and that no further psychological assessment was required, although a determination of Student's placement and services for the 2011-2012 school year was deferred to a reconvened IEP team meeting, which was scheduled for June 15, 2011.

60. The meeting lasted for over one and a half hours, but was adjourned to reconvene on June 15, 2011, because the District had failed to provide Parents with a copy of the report of Student's language PLOP's, or a copy of the proposed language

goal, prior to the meeting, and wanted Parents to have an opportunity to review the PLOP's and proposed goal. The IEP team agreed that the issues to be discussed at the reconvened meeting would be (i) Student's language PLOP's and proposed language goal, (ii) placement for the 2011-2012 school year, and (iii) the addition of behavior intervention consultation for Student's transition to middle school.

June 15, 2011 IEP Team Meeting

61. The IEP team meeting reconvened on June 15, 2011, with the same IEP team members from the June 2, 2011 meeting. Ms. Clark presented Student's progress on his current language goal, his language PLOP's and the proposed language goal, and recommended LAS services for 30 minutes per week as appropriate to allow Student to progress on the proposed language goal. She explained that the direct services delivery model called for pull out services and collaboration with the SLD/SDC teacher, providing Student with opportunities to practice LAS lessons in the classroom. She believed that because Student spoke in complete sentences, he did not need assistive technology to communicate. Parents were given an opportunity to voice concerns regarding the language PLOP's, proposed language goal, measurability of the goal, and the amount of services or need for assistive technology, but did not express disagreement with any of the reports or recommendations. The IEP team adopted the proposed language goal and Ms. Clark's recommendation of 30 minutes of individual LAS service one time per week. Ms. Clark opined at the hearing that 30 minutes of individual LAS service one time per week met Student's language needs in June 2011.

62. Parents did not request another LAS assessment, and Ms. Clark opined at the hearing that the results of the December 2010 LAS assessment were still valid in June 2011, and that the IEP team had sufficient information to determine Student's unique language needs without further assessment at that time. The IEP team reviewed the logs of Student's LAS services, and determined that Student had missed two and a

half hours of LAS services, which would be made up by June 24, 2011. The team considered, but found that Student did not require, assistive technology to communicate. Ms. Clark and Glen Alta principal, Mr. Kaminski, left the meeting after the language goals, LAS services and compensatory hours were determined.

63. The June 15, 2011 IEP team, also considered Student's behavioral needs and placement for sixth grade. The behavior goal from the May 2, 2011 IEP was updated to provide that Student would remain seated for at least 20-30 minutes, and focus and attend to task during teacher directed lessons, small group or independent study time, three out of four trials with 75 percent accuracy as measured by the teacher(s). The goal included objectives of fading out verbal and non-verbal cues. Parents expressed their belief that Ms. Lizarde had unfair and unachievable expectations for their son. Ms. Gebremedhin, Ms. Reynoso and Ms. Matkovic presented the team with their investigations into Parents' complaints, and unanimously opined that Student was capable of grade level work with the supports of an SLD/SDC classroom and was showing meaningful progress on his behavior goal since the BSP was implemented. Ms. Matkovic recommended that behavior intervention consultation be provided to Student's middle school teacher or teachers, for 30 minutes per month, one to five times, between September 26 and December 9, 2011, if Student transitioned to El Sereno, to support Student in another school change and ensure that the BSP would be implemented effectively.

64. Ms. Matkovic also provided the IEP team with information on the sixth grade SLD/SDC classrooms at Glen Alta and the SLD/SDC classroom El Sereno. She opined that either program would be appropriate for Student. She recommended that if Student was offered placement at El Sereno, the IEP should include behavior intervention consultation to support Student's transition to middle school, which involved another school change and multiple classrooms and teachers. Ms. Matkovic believed that a behavior intervention consultant would be able to knowledgeably

instruct Student's teachers on implementation of Student's BSP, call an IEP team meeting if necessary to adjust the BSP, and arrange for additional behavior analysis if serious behaviors emerged. Ms. Matkovic told the IEP team that she had spoken to the District's behavior support administrator and the specialist overseeing teachers, and that a behavior support consultant would be "ready to go" if the team offered Student placement at El Sereno.

65. The team considered a variety of placement options for Student, and determined that the SLD/SDC classroom at El Sereno would meet Student's unique needs. The classroom was small, had a high adult to student ratio, and provided intensive educational instruction, including introduction of material in small batches, re-teaching concepts, and regular review of material. The team disagreed with Parents' proposal to place Student in a mildly mentally retarded program in a non-public school (NPS), because the team felt that Student had a specific learning disability, not mental retardation, and that an NPS was too restrictive because Student would not have opportunities to be educated with typically developing peers.

66. The June 15, 2011 IEP team offered Student placement in an SLD/SDC class using general education curriculum at El Sereno, Student's home middle school, for 924 minutes per week or 96 percent of Student's school day, with LAS services for 30 minutes one time per week and behavior intervention consultation be provided to Student's teacher or teachers, for 30 minutes per month, one to five times, between September 26 and December 9, 2011, in support of Student's BSP.

67. The June 2, 2011 IEP, as finalized at the June 15, 2011 IEP team meeting, contained goals consistent with Student's areas of need, in behavior support, prevocational/work habits, reading, writing/ELD, math, and language. A review of the goals shows that all goals were understandable, measurable and included short-term objectives.

68. On June 23, 2011, the June 2, 2011 IEP notes were updated to document, and Ms. Clark testified credibly, that Student had received the two and a half hours of compensatory LAS services as calculated at the June 15, 2011 IEP team meeting.

69. Parents did not consent to the June 2, 2011 IEP, as developed on June 2 and June 15, 2011.

LEGAL CONCLUSIONS

1. As the petitioning parties, Parents, on behalf of Student, have 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].)

ISSUE 1(A) – WHETHER DISTRICT FAILED TO COMPLETELY AND SUFFICIENTLY ASSESS STUDENT

2. In Issue 1(a), Parents contend that the District failed to adequately assess their son in preparation for the June 2, 2011 IEP. In support of this assertion, Parents presented evidence that between Student's assessments for the triennial IEP on December 7, 2010 and the IEP of June 2, 2011, Parents had provided the District with two privately funded psychological assessments diagnosing Student as mildly mentally retarded or autistic, but that the District had failed to re-evaluate Student in light of the new information. Parents also submitted the triennial assessment plan to show that Student had been assessed in less areas than designated in the plan, as only psychological and language reports had been presented at the triennial IEP team meeting. District disagrees, contending Student was properly assessed in all areas of suspected disability, and that the private assessments did not invalidate or warrant a new psychological assessment prior to the June 2, 2011 IEP team meeting.

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. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) 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); Ed. Code § 56031; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "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, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) *Rowley* also made clear that the IDEA does not provide for an "education...designed according to the parent's desires." (*Id.* at p. 207.) 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. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 ("*Adams*") .) "An IEP is a snapshot, not a retrospective." (*Id.* at p.1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 93 F.2d 1031, 1041.) Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Ibid.*)

6. An assessment is the procedure used to determine whether a student has a disability and the extent of the child's need for special education and services. (71 Fed. Reg. 46548 (Aug. 14, 2006).) A school district must assess a child in all areas related to a suspected disability. (20 U.S.C. § 1414(a)(2), Ed. Code § 56320, subd. (f).) It must also reassess the child no more than once a year, but at least once every three years, unless the district and parent agree otherwise. (20 U.S.C. § 1414(a)(2)(B), 34 C.F.R. § 300.303(b) (2006)³, Ed. Code, § 56381, subd. (a)(2).) 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).) Assessments must be conducted by qualified persons who are knowledgeable of the student's disability, who are competent to perform the assessments, as determined by the local educational agency, and who give special attention to the student's unique educational needs, including, but not limited to, the need for specialized services, materials, and equipment. (Ed. Code, §§ 56320, subd. (g), and 56322.) The personnel who assess the student must

³ All subsequent citations to the Code of Federal Regulations are to the 2006 edition.

prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 and 56329.)

7. A failure to assess a child in all areas related to the suspected disability is a procedural violation of the IDEA. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.) In the event of a procedural violation, a denial of FAPE may only be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).)

8. As an initial matter, Student did not demonstrate that the District violated IDEA procedures by not assessing Student properly in all areas of suspected disability. The District assessed Student in each area of suspected disability identified on the assessment plan consented to by Parents on October 13, 2010: health and development, general ability, academic achievement, social emotional skills, speech and language skills, and fine and gross motor skills. The plan provided that each assessment would be completed by a particular member of District's staff, that is, by a school nurse in the area of health and development, by a special education specialist in the area of academic achievement, by a speech therapist in the area of speech and language skills, and by a psychologist in the remaining areas (including speech and language skills). The fact that the results of multiple assessments were presented in two reports, does not establish that all assessments were not performed. Ms. Copeland Weiss' triennial psychoeducational assessment report relayed results from assessment in each and every area referenced in the plan, and Ms. Varias-Wong's speech and language report provided further assessment information on Student's speech and language skills. Parents did not request assessment of Student in any other area of suspected disability, nor did they present evidence at hearing of any area of disability not assessed.

Therefore, the weight of the evidence established that District assessed Student in all areas of suspected disability. (Factual Findings 5-10, 12-16, 18, 19, 25, 29.)

9. To the extent Parents challenge the IEP team's determination of Student's cognitive abilities and language needs, the evidence demonstrated that the District's triennial psychological and language assessments were procedurally in compliance with the IDEA, and produced accurate information about Student's needs. Ms. Copeland Weiss and Ms. Varias-Wong were properly credentialed and had the necessary experience to qualify them to conduct the psychological and language assessments, respectively. Although Student's primary academic language was English, he was an English language learner, and Ms. Copeland Weiss used a number of non-verbal subtests and tests that used numbers and non-verbal reasoning. Ms. Varias-Wong attempted testing in Spanish as well as English, but had to stop that attempt when Student responded only in English. Both Ms. Copeland Weiss and Ms. Varias-Wong used a variety of instrument tools, including observation, interview, and non-standardized assessment instruments. The assessment instruments chosen were designed to provide information about Student's cognitive abilities and his speech and language needs, to provide information about whether Student required special education with LAS services. Further, neither assessor relied solely on their assessments, but also assessed Student's cognitive and language abilities through classroom observation and review of work samples. (Factual Findings 6-25.)

10. The District was not required to reassess Student upon receipt of the private psychological evaluations by Dr. Ayvazian and Dr. Gaines. These reports added to the information presented to the IEP team concerning Student's unique needs, but failed to warrant a fourth psychological assessment within one year. The testimony of Ms. Copeland Weiss and Ms. Gebremedhin was persuasive that the District assessments conducted seven months prior to the June 2, 2011 IEP team meeting were still valid and sufficiently current and comprehensive to provide accurate information on Student's

cognitive abilities. Ms. Gebremedhin testified persuasively that the private psychological reports were seriously flawed and of little to no value in understanding Student's academic achievement and functional performance in the school setting. Dr. Ayvazian specifically withheld an opinion regarding Student's ability to perform in school until he had an opportunity to review Student's IEPs. The section of Dr. Gaines' report on cognitive functioning inexplicably reported scores for one test instrument, but discussed scores for a different test instrument. The weight of the evidence established that the lack of substance in the private psychological reports with regard to Student's ability to access the general education curriculum did not rise to the level of invalidating the results of District's comprehensive psychoeducational assessment, or requiring the District to conduct additional psychoeducational evaluation, prior to the June 2, 2011 IEP team. (Factual Findings 34-43 and Legal Conclusions 1, 3-9.)

11. Even assuming a procedural violation by failure to properly assess, Parents failed to demonstrate that as a result, Parents' opportunity to participate in decision-making was infringed. The private reports were presented to IEP teams, twice, at the IEP team meetings on May 2, 2011 and June 2, 2011. Ms. Gebremedhin testified persuasively that she met with Parents prior to the May 2011 meeting to review the private reports, and that Parents were given an opportunity to, and did, discuss the results with the other members of the team at the May 2, 2011 and June 2, 2011 IEP team meetings, providing Parents with an opportunity to participate in the decision making process. (Factual Findings 42-44, 59-60 and Legal Conclusions 1, 3-10.)

12. Parents also failed to demonstrate that a lack of assessment impeded Student's right to a FAPE or deprived him of educational benefit. Dr. Ayvazian's report made no educational recommendations, and Dr. Gaines' report recommended special education and behavioral supports, both of which were offered in the June 2, 2011 IEP. Neither Dr. Ayvazian nor Dr. Gaines appeared or testified at the hearing to explain their opinions or the internal inconsistencies in Dr. Gaines' report. No evidence was presented

that Dr. Ayvazian or Dr. Gaines were school psychologists or had any experience in diagnosing children with mental retardation or specific learning disabilities. The District's assessors were more familiar with Student and his abilities and performance from record reviews, conducting formal testing on Student, observations, interviews with Student's teachers and Parents, and, in the case of Ms. Varias-Wong and Ms. Clark, working directly with Student. Ms. Copeland Weiss' testing showed that Student was achieving average to low average scores in cognitive abilities, and auditory perception and visual perception skills, Student had achieved proficient and partially proficient scores on his report card, and tested basic on California standardized testing in math. Ms. Varias-Wong and Ms. Clark testified persuasively that Student tested in the low average range for listening comprehension, that Student's vocabulary delays were expected in an intermediate English language learner, and that Student was progressing rapidly on his expressive language goals. Student's May PLOP's showed him at grade level in many areas of reading, math and writing, and his SLD/SDC teacher reported that he was capable of doing grade level work. Ms. Copeland Weiss, Ms. Gebremedhin, Ms. Varias-Wong and Ms. Clark testified unanimously and persuasively that on the information available to the June 2, 2011 IEP team, including the two privately obtained psychological reports, the team could reasonably conclude that Student was capable of accessing the general education curriculum with the academic supports of an SLD/SDC classroom, and with the language and behavioral supports provided by the June 2, 2011 IEP. (Factual Findings 6-60 and Legal Conclusions 1, 3-11.)

13. The preponderance of the evidence established that the assessments conducted prior to the June 2 and June 15, 2011 IEP team meetings addressed all areas of Student's suspected disability and provided the IEP team with sufficient information from which Student could be offered a FAPE. In other words, the District met its procedural obligation to assess Student. Accordingly, Student failed to show that he was denied a FAPE on this ground. (Factual Findings 5-60 and Legal Conclusions 1, 3-12.)

ISSUE 1(B) – WHETHER DISTRICT FAILED TO PROVIDE THE IEP TEAM WITH
ACCURATE PRESENT LEVELS OF PERFORMANCE

14. In Issue 1(b), Parents contend that the District misidentified Student's present levels of performance (PLOP's) at the June 2 and 15, 2011 IEP team meetings, because (i) Student's speech pathologist had left on maternity leave in January 2011 and was unable to report on Student's speech levels, and (ii) the District had failed to report that Student's behaviors were escalating. The District contends that Student's language skills and functional behavior were accurately documented in the IEP.

15. The IDEA requires that each IEP include a statement of the child's present levels of academic achievement and functional performance, commonly referred to as "present levels of performance" (PLOP's), including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A), 34 C.F.R. § 300.320(a)(1).) A PLOP creates a baseline for designing educational programming and measuring a student's future progress towards annual goals.

16. Legal Conclusions 1 and 3 through 13, above, are incorporated by reference.

17. As to Student's first contention, that the District failed to provide the IEP team with accurate speech and language PLOP's because of changes in speech pathologists, Student failed to show a procedural violation. Parents' evidence that Student's original speech pathologist was on maternity leave at the beginning of the 2010-2011 school year, and that Student missed several months of LAS services, which were subsequently made up by District, was undisputed. However, District's evidence persuasively established that Ms. Varias-Wong provided LAS services to Student from September through December 2010, and that Ms. Clark began providing LAS services to Student in April or May of 2011, and that both were capable of determining, and did determine, accurate levels of Student's performance for the December 2010 and May

and June 2011 IEP team meetings. Parents presented no evidence that Student's performance in the area of language on June 2 or June 15, 2011 was other than as reported by Ms. Clark, and so failed to meet their burden of showing that Student's language PLOP's as reported were inaccurate. (Factual Findings 20, 44, 54-57, 61-62, 68 and Legal Conclusions 1, 3-13, 15.)

18. Parent's further contention that Student's behaviors were not accurately reported also fails. Parents' evidence that Student's behaviors were escalating in the SLD/SDC classroom at Glen Alta was undisputed. However, the testimony of Ms. Gebremedhin, Ms. Reynoso and Ms. Matkovic established that the District was aware of the increase in off-task, task avoidance and disrespectful behavior, and had both reported the escalating behaviors and developed behavior goals and a BSP to address those behaviors just 30 days prior to the June 2, 2011 IEP team meeting. Further, the testimony of Ms. Gebremedhin, Ms. Reynoso, and Ms. Matkovic established that implementation of the new BSP was addressed at the June 2 and June 15, 2011 IEP team meetings, with behavioral supports added for Student's transition to middle school. Parents presented no evidence that Student's functional behavior as documented in the behavior goals and BSP consented to by Parents in the May 2, 2011 IEP had changed so significantly that the information provided to the June 2, 2011 IEP team concerning Student's behavior was inaccurate. Having failed to demonstrate a procedural violation, Student cannot be said to have been deprived of a FAPE on this ground. (Factual Findings 39-40, 42-43, 45-53, 63-67 and Legal Conclusions 1, 3-13, 15, 17.)

19. Parents submitted no evidence that Student's PLOP's in the area of reading, math or writing skills were inaccurate, such that Student was deprived of a FAPE. District's witness, Ms. Reynoso, testified persuasively that she developed Student's academic PLOP's from multiple sources, including teacher interview, classroom observation, records review and classroom data collected from work samples and subject matter tests, and that they accurately reflected Student's academic performance.

For purposes of providing a complete picture at the May and June IEP team meetings, she also included a section in each PLOP on Student's levels of performance in December 2010 to show Student's progress. Ms. Clark testified persuasively that she developed Student's language PLOP's through review of Student's records, including Ms. Varias-Wong's recent speech and language assessment, interviews with Student's teacher and observations of Student during her own LAS sessions with him over the preceding months, and discussed Student's language needs in detail at the June 15, 2011 IEP team meeting, including his needs as an English language learner. The weight of the evidence established that District provided accurate PLOP's to the June 2, 2011 IEP team in the areas of reading, math, writing skills and language. Having failed to demonstrate a procedural violation for failure to provide Student's academic or language PLOP's, Student cannot be said to have been deprived of a FAPE on this ground. (Factual Findings 41-60 and Legal Conclusions 1, 3-13, 15, 17, 18.)

20. The weight of the evidence established that Student's present levels of performance in language, behavior and academic areas presented to the June 2 and June 15, 2011 IEP teams were accurate. Because Student did not show a procedural violation occurred, he did not demonstrate he was denied a FAPE on this ground. (Factual Findings 20, 39-68 and Legal Conclusions 1, 3-13, 15, 17-19.)

ISSUE 1(C) – WHETHER DISTRICT FAILED TO DEVELOP MEASURABLE ANNUAL GOALS

21. In Issue 1(c), Parents contend that the June 2, 2011 IEP did not contain measurable annual goals designed to address the full range and extent of Student's educational challenges. The District disagrees, contending that goals were developed for each of Student's areas of need, and that each goal was discretely measurable.

22. An IEP must include a statement of measurable goals, including academic and functional goals, designed to (i) meet the child's needs resulting from the child's

disability to enable the child to be involved in and make progress in the general education curriculum, and to (ii) meet the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2); 34 C.F.R. § 300.320(a)(2)(i).) The IEP must contain annual goals that the child has a reasonable chance of attaining within a year, based upon the child's present levels of academic achievement and functional performance, and a statement of how the goals will be measured. (Ed. Code, §§ 56344 and 56345, subd. (a)(3).) The IEP must show a direct relationship between PLOP's, the goals and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) The failure of an IEP team to include measurable goals in an IEP is a procedural violation, and a denial of FAPE may only be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).)

23. Legal Conclusions 1, 3 through 9, 13, 15, and 18 through 20, above, are incorporated by reference.

24. Here, Parents failed to identify an area of need resulting from Student's disability for which a goal should have been designed to enable Student to be involved in and make progress in the general education curriculum, or to meet other educational needs of Student, but was not. The assessments performed over the preceding year, the PLOP's developed by Ms. Reynoso, and the behavior PLOP's and proposed BSP, provided sufficient information to the June 2, 2011 IEP team for the team to identify all of Student's areas of need. Annual goals to address all of Student's needs, which included academics (reading, writing/ELD and math), language and behavior (behavioral support and prevocational/work habits), were developed based on those PLOP's. (Factual Findings 6-29, 39, 40, 42-67 and Legal Conclusions 1, 3-13, 15, 17-22.)

25. Parents also failed to identify any goals that were not measurable. To the contrary, Ms. Reynoso, Ms. Gebremedhin and Ms. Clark testified that the academic, behavior and language goals as stated in the June 2, 2011 IEP, provided a baseline based upon Student's PLOP's, and were measurable as written, including measurable objectives. The objectives in the language goal refer generally to "minimal" and "maximum" prompting, but Ms. Clark testified that a credentialed speech therapist or teacher would be familiar with the amount of prompting involved and be able to implement and measure progress on that goal. Parents failed to voice any concerns regarding the measurability of the goals at the June 2 or June 15, 2011 IEP team meetings, such that it was reasonable for the District to offer them as written. (Factual Findings 45-67 and Legal Conclusions 1, 5, 22, 24.)

26. The June 2, 2011 IEP contained a statement of measurable annual goals, based upon Student's PLOP's and designed to provide Student with some educational benefit. Having failed to demonstrate that the District did not follow IDEA procedures in developing the IEP, Student cannot show a deprivation of a FAPE on this ground. (Factual Findings 6-29, 39, 40, 42-67 and Legal Conclusions 1, 3-13, 15, 17-22, 24, 25.)

ISSUE 1(D) – WHETHER DISTRICT OFFERED APPROPRIATE BEHAVIORAL SUPPORT

27. At Issue 1(d), Parents contend that Student was offered insufficient behavioral support. The District contends that the behavior goals, BSP and the 30 minutes per month of behavior intervention consultation to Student's teacher at El Sereno offered in the June 2, 2011 IEP appropriately addressed Student's behavior needs.

28. Legal Conclusions 1, 3 through 9, 13, 18, 20, and 24 through 26, above, are incorporated by reference.

29. In order for an IEP to meet the substantive requirement of offering a FAPE, the IEP must offer meaningful access to an education that is sufficient to confer some

educational benefit upon child. (*Rowley, supra*, 458 U.S. at p. 200.) In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).) An educational program is appropriate under the IDEA if it is reasonably calculated to provide the child with educational benefit. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 951.)

30. A behavior intervention plan, also referred to as a BSP or behavior management plan, is a set of positive behavioral interventions and supports, along with other strategies, designed to assist a student whose behavior impedes his own learning or the learning of others. (34 C.F.R. § 300.324(a)(2)(i).) Although the IDEA requires a school district to consider the need for a BSP when a student exhibits problem behavior, it does not provide any guidance as to the BSP's format or contents, and may be developed on a case-by-case basis, taking into account the particular student's behavioral needs. (See 34 C.F.R. § 300.530(a).)

31. The methodology to be used to implement an IEP is left up to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley, supra*, 458 U.S. at p. 209; *Adams, supra*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.) The regulations implementing the IDEA do not require that any particular methodology, strategy or technique be used to develop a student's BSP. (71 Fed. Reg. 46683 (Aug. 14, 2006).)

32. Here, Parents failed to demonstrate that the behavior supports offered to Student were inappropriate, either in type, or frequency and duration. Parents believed at the time of the June 2, 2011 IEP team meeting that the SDC teacher was "punishing" Student for lack of participation and off-task behavior, which Parents attribute to

Student's inability to do the work. Parents contend that a classroom placement that requires Student to attempt grade level work will inevitably result in problem behaviors, because such expectations exceed Student's abilities. However, Parent's perception of Student's inability to do grade level work in the SLD/SDC classroom was contradicted by District's academic testing placing Student in the average to low average range, Student's "proficient" grades and "basic" score in standardized math testing, and by the testimony of Ms. Gebremedhin, Ms. Reynoso and Ms. Matkovic, who observed Student in the classroom on multiple occasions in preparation for the June 2, 2011 IEP, and found Student engaged in lessons, on task, doing work, and fairly well behaved. (Factual Findings 8, 11-12, 14, 15, 21-23, 39, 47, 50, 52.)

33. The weight of the evidence established that the BSP included in the June 2, 2011 IEP offer provided Student with the necessary behavior support to access the general education curriculum. The SLD/SDC classrooms at Glen Alta (for fifth grade) and at El Sereno (for sixth grade) offered Student small class size, high adult to student ratio, and intensive general education instruction (curriculum presented in small steps, regular re-teaching and review, praise and encouragement). Ms. Gebremedhin, Ms. Reynoso and Ms. Matkovic persuasively testified that although Student's off-task behavior was being called to his attention more often in the SLD/SDC classroom than it had been in the general education classroom, and Student appeared to have incorrectly interpreted cues and consequences as "punishment," his BSP was being implemented appropriately to replace problem behaviors with appropriate behavior through behavioral strategies and positive reinforcement. As a result, Student was making progress on his behavior and prevocational/work habits goals. Father's testimony that Student was being punished, despite or as part of the BSP, was not based on his own observations, but on statements by Student and Father's lay interpretation of the independent assessments (which in turn were based upon Parents' reports), and was not persuasive. In contrast, the testimony of Ms. Gebremedhin, Ms. Reynoso and Ms. Matkovic was very persuasive,

as it was based on direct observation and valid assessments of Student's educational abilities and functional performance. The professional opinion of Ms. Matkovic that the behavior intervention consultation offered in the June 2, 2011 IEP was sufficient to ensure a smooth transition for Student to middle school, and to monitor for any escalation in behaviors before they became severe, was also given great weight. (Factual Findings 39, 40, 45, 51-53, 63-67 and Legal Conclusions 1, 3-13, 18, 20, 24-26, 28-32.)

34. The behavior goals, BSP and behavior intervention consultation included in June 2, 2011 IEP constituted positive behavioral interventions and supports, along with other strategies, designed to assist Student with behavior that impedes his own learning or the learning of others. These supports were individually designed to provide educational benefit in accordance with the standards of *Rowley* and Parents failed to meet their burden of proving that the District failed to offer appropriate behavior support for Student. (Factual Findings 8, 11-12, 14, 15, 21-23, 39, 40, 45, 50, 51-53, 63-67 and Legal Conclusions 1, 3-13, 18, 20, 24-26, 28-33.)

ISSUE 1(E) – WHETHER DISTRICT OFFERED APPROPRIATE SPEECH AND LANGUAGE SERVICES

35. Parents contend in their due process request that Student requires a minimum of two hours of LAS services per week, delivered by a non-public agency (NPA). The District contends that the 30 minutes per week of direct LAS services by a District speech pathologist is sufficient to meet Student's language needs.

36. Legal Conclusions 1, 3 through 9, 13, 19, 20, 24, 26 and 31, above, are incorporated by reference.

37. Parents presented no evidence that Student required more than 30 minutes of direct LAS services per week, as offered in the June 2, 2011 IEP. Similarly, Parents did not produce evidence that Student could receive a FAPE only if LAS services were provided by an NPA. Instead, District demonstrated that 30 minutes per week of

LAS services provided by a District speech pathologist would meet Student's language needs and allow him to progress on his language goal. Ms. Clark testified credibly and persuasively that Student had met his annual language goal from the December 7, 2010 IEP early, by May 2011, with 30 minutes of direct LAS services per week, and that the same level of LAS services provided by a District speech therapist would be sufficient allow Student to meaningfully progress on the annual language goal in the June 2, 2011 IEP. She also noted that the June 2, 2011 IEP offered an SLD/SDC with an LAS services delivery model that called for pull out services and collaboration with Student's teacher, which collaboration would ensure that Student practiced what was learned in his LAS therapy sessions in the more naturalistic setting of the classroom, offering further support for that goal. (Factual Findings 44, 54-57, 61, 62.)

38. Father's testimony that District's speech pathologists missed several LAS sessions in Spring 2011, neither demonstrates that the services offered were insufficient to meet Student's needs, nor that Student requires an NPA, rather than a District therapist to provide LAS services. First, whether services were missed and Student is entitled to compensatory services is a different issue from whether the IEP offers an appropriate level of related services, the issue identified in Student's complaint. In any event, although the evidence of missed LAS sessions was undisputed, District's evidence established that the missed sessions were made up before the end of the 2010-2011 school year. Second, the inference from father's testimony that an NPA would have provided services without interruption in the event its speech pathologist went on maternity leave is speculative at best, and does not establish that a District speech pathologist is unable to provide LAS therapy services as provided in the IEP. (Factual Findings 44, 62, 68.)

39. Parents failed to meet their burden of proving that in order to receive a FAPE, Student required more LAS services, or a different provider, than that offered in

the June 2, 2011 IEP. (Factual Findings 44, 54-57, 61, 62, 68 and Legal Conclusions 1, 3-9, 13, 19, 20, 24, 26, 37, 38.)

ISSUE 1(F) – WHETHER STUDENT REQUIRED ASSISTIVE TECHNOLOGY SERVICES

40. Parents contend in their due process request that Student requires access to assistive technology or “other necessary communication devices” as part of his educational program, but that the District failed to offer Student assistive technology services in the June 2, 2011 IEP. The District contends that Student is verbal, and does not require assistive technology to communicate.

41. Legal Conclusions 1, 3 through 9, 13, 19, 20, 24, 26 and 37, above, are incorporated by reference.

42. As part of the IEP process, the IEP team must consider whether the child needs assistive technology devices and services. (34 C.F.R. § 300.324(a)(2)(v).) The school district is required to provide assistive technology and devices or services to a student with a disability if the IEP team determines that the child needs the device or service in order to receive a FAPE. (*Letter to Anonymous*, 24 IDELR 854 (OSEP 1996). “Assistive technology devices” are defined in the IDEA as any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve the functional capabilities of a child with a disability. (34 C.F.R. § 300.5.) “Assistive technology services” are defined as any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device. (34 C.F.R. § 300.6.)

43. The June 2, 2011 IEP states, in its “Additional Factors” section, that the IEP team considered whether Student required assistive technology and determined that no assistive technology support was required. Parents offered no evidence at hearing that Student required assistive technology to communicate, or for any other purpose, nor was any evidence offered as to what type of assistive technology Parents contend is

required for Student to receive a FAPE. Even Parents' evidence demonstrated that Student is fully capable of oral communication and accessing the curriculum without assistive technology devices. Specifically, Dr. Ayvazian's report states that Student interacted with him and had speech skills, although unsophisticated in terms of ideas, and Dr. Gaines' report noted that Student spoke in sentences, engaged in conversations, and described his own point of view. District's witnesses, Ms. Varias-Wong and Ms. Clark, testified persuasively that voice output devices and other assistive technology for communication are intended to assist students without speech or the ability to communicate. Their opinion that Student was already verbal and able to communicate his wants and needs, and so would not benefit from assistive technology for communication, was given great weight. Without any other evidence regarding why Student would need assistive technology to receive a FAPE, this claim fails. (Factual Findings 25, 31, 33, 54-57, 61, 62 and Legal Conclusions 1, 3-9, 13, 19, 20, 24, 26, 37 and 42.)

44. Parents failed to meet their burden of proving that Student required assistive technology devices or services to receive a FAPE. Student was not denied a FAPE on this ground. (Factual Findings 25, 31, 33, 54-57, 61, 62 and Legal Conclusions 1, 3-9, 13, 19, 20, 24, 26, 37, 42 and 43.)

ISSUE 1(G) – WHETHER STUDENT REQUIRED SPECIAL EDUCATION AND RELATED SERVICES FOR 50 WEEKS OF THE CALENDAR YEAR

45. Parents contend that Student requires special education and related services for 50 weeks of the calendar year in order to avoid regression. The District contends that Student's needs can be met during the regular school year.

46. Legal Conclusions 1, 3 through 9, 13, 19, 20, 24, 26, 37 and 39, above, are incorporated by reference.

47. Under the IDEA, schools are required to provide extended school year (ESY) services as necessary in order to provide a child with a FAPE. (34 C.F.R. § 300.309(a).) “ESY services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.” (*N.B. v. Hellgate Elementary School District* (9th Cir. 2008) 541 F.3d 1202, 1211-1212 (*N.B.*), quoting *MM ex rel. DM v. Sch. Dist. of Greenville County* (4th Cir.2002) 303 F.3d 523, 537-538.)

48. Here, Parents’ request for 50 weeks of instruction per year is essentially a request for year-round services. Per *N.B.*, Parents must show that year-round instructional days are necessary to permit Student to benefit from his education, that is, that the educational benefits accrued during the regular school year would be significantly jeopardized if Student were not provided with the additional weeks of instruction. However, Parents submitted no evidence that Student has suffered regression during breaks in previous school years or over the summer months.

49. On the other hand, the District’s evidence showed that Student was making significant progress in academic performance and language skills following the regular school calendar, without a 50 week program. By the third quarter of fourth grade, Student was proficient or partially proficient in the general education curriculum, and had tested at the basic level in mathematics statewide standardized testing. In fifth grade, after the summer, winter and spring breaks, by June 2011, Student had made meaningful progress on his goals with good reading fluency, average scores in many grade level mathematics skills, written expression and brief writing, and the ability to organize ideas and write paragraphs with prompting. Student also met his annual language goal from the December 7, 2010 IEP in less than five months, despite the winter and spring breaks that would have occurred between the December 7, 2010 and May 2, 2011 IEP team meetings. (Factual Findings 11, 12, 23, 44, 47, 52, 56; Legal Conclusions 1, 3-9, 13, 20, 24, 47.)

