

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. 2011100551

CORRECTED DECISION¹

Eileen M. Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on March 27, and 29, 2012, and April 10, and 11, 2012, in Los Angeles, California.

Susan Winkelman, Attorney at Law, represented the Los Angeles Unified School District (District). District representative, Dianna Massaria, Coordinator, Special Education, also attended the hearing.

Student's mother (Mother) represented Student. Student attended the last day of hearing.

A Spanish-language interpreter was available throughout the hearing, and provided simultaneous interpretation of the proceedings to Mother, and English-language interpretation of Mother's testimony and witness examination for the record.

Student filed her request for due process hearing (complaint) on October 17, 2011. At the telephonic prehearing conference (PHC) on December 7, 2011, OAH granted District's request to continue the due process hearing. At hearing, the parties

¹ The Decision was corrected to adjust the spacing between paragraphs, and otherwise was not modified.

stipulated to continue the hearing from March 27, 2012, to March 29, 2012, to conduct settlement discussions on March 28, 2012. On April 11, 2012, at the close of the witness testimony, the parties were granted permission to file written closing arguments by April 27, 2012. After the parties timely filed their closing briefs, the record was closed and the matter submitted.

ISSUES²

1) Did District deny Student a free appropriate public education (FAPE), between October 17, 2009, and October 17, 2011, by failing to comply with a settlement agreement?³

2) Did District deny Student a FAPE, between October 17, 2009, and October 17, 2011, by failing to provide Student with independent assistance in reading?

3) Did District deny Student a FAPE by failing to provide Student with psychological therapy to overcome trauma resulting from sexual harassment in 2010?

4) Did District deny Student a FAPE, between October 17, 2009, and October 17, 2011, by hiding documents that could assist Student with her social and intellectual development?

5) Did District deny Student a FAPE, between October 17, 2009, and October 17, 2011, by giving Student erroneous test scores and grades?

² On January 18, 2012, District filed a Motion to Dismiss Issues 2, 4, 5, and 6 on the ground that these issues are not cognizable under the IDEA or within the jurisdiction of OAH. On February 29, 2012 OAH denied the Motion to Dismiss as an untimely Notice of Insufficiency. The ALJ denied District's request for reconsideration at hearing.

³ The order of Student's issues was adjusted to conform to the factual chronology and the legal analysis. The time frame of Issue Three was clarified.

6) Did District deny Student a FAPE, between October 17, 2009, and October 17, 2011, by providing incompetent teachers and insufficient instructional time due to shortened school days on Tuesdays?

FACTUAL FINDINGS

JURISDICTIONAL AND BACKGROUND INFORMATION

1. Student is a 14-year-old young lady who at all relevant times resided within the boundaries of District with her parents and two older brothers. Parents and District agreed to retain her in the second grade and again in the fourth grade due to her academic deficiencies. Student was made eligible for special education and related services at an initial individual education program (IEP) team meeting on December 7, 2006, under the primary eligibility category of specific learning disability (SLD). Student also suffers from migraines.

2. Since her initial IEP team meeting, Student has received a variety of classroom supports including pre- and re-teaching, repetition, small group instruction, extended time, scaffolding instruction, and prompts, to support her reading fluency, comprehension and writing.

2009 SETTLEMENT AGREEMENTS

3. During the 2008-2009 school year Student was enrolled in a seventh grade special day class (SDC) for pupils with SLD at John Muir Middle School (Muir).

4. On November 10, 2008, Mother filed a due process hearing request against District, OAH Case number 2008110402, arising from Student's special education program.

5. On December 17, 2008, Mother and District entered into an interim settlement agreement, where District agreed to fund 40 hours of intensive one-on-one

educational instruction for Student in the area of mathematics, reading and writing, with a nonpublic agency (NPA).

6. On February 17, 2009, Muir's school psychologist conducted a psychoeducational assessment of Student. She reported that Student was receptive to small group instruction, and responded to positive encouragement and praise when she volunteered to participate and when she was on task. Student exhibited difficulty focusing for prolonged periods of time, and completing her homework and class assignments independently. She had difficulty expressing her ideas and thoughts. Student was shy. She withdrew from individuals at school and in her home environment. The school psychologist concluded that Student's inattention, distractibility, and low confidence in her abilities impacted her involvement and progress in the general education curriculum.

7. On March 16, 2009, the IEP team convened to discuss the psychoeducational assessment. The IEP team developed a behavioral support plan (BSP) for Student to address Student's withdrawal from class discussions and activities. Supports included extended time on tasks, completion of tasks in part, verbal cues, praise, peer models, calm de-escalating language, peer tutors, small cooperative learning groups, and learning new social skills and scripts, and how to request breaks.

8. On March 17, 2009, Mother and District executed a final settlement agreement where District provided 40 additional hours of intensive one-on-one educational instruction for Student with the same NPA service provider, for the same academic areas. Student was required to attend the sessions, and would forfeit missed sessions when she failed to attend. District was obligated to provide makeup sessions whenever the provider cancelled a session.⁴

⁴ Neither party submitted the settlement agreement as an exhibit at hearing, however, its terms are relevant to Student's claims that she was denied a FAPE because

9. As part of the March 19, 2009, settlement agreement, Mother consented to the March 16, 2009, IEP, including the BSP, and Mother waived all claims arising from Student's educational program through the date of the agreement.

10. Student liked having one-on-one instruction at home. However, Mother was dissatisfied with the teacher sent by the NPA service provider. Mother requested that the NPA send a different teacher because she thought the teacher yelled at her daughter and intimidated her.

11. When the NPA agency informed Mother that it could not change the personnel assigned, Mother terminated the intensive special education instructional services. Mother did not inform District personnel that she was displeased with the NPA personnel, or that she terminated the services. At hearing, Mother estimated that Student received 20 hours of service, but she did not appear certain, and her testimony was not corroborated by other witnesses, or supporting documentation.

2009-2010 SCHOOL YEAR

12. Student began her 2009-2010 seventh grade school year at Muir in a SDC for pupils with SLD.

13. On October 14, 2009, Mother filed a due process hearing request against District, OAH case number 200901287.

14. On December 3, 2009, Mother and District entered into a settlement agreement in OAH case number 2009101287, where District agreed to transfer Student

it was not implemented. Accordingly, the ALJ has taken official notice of the March 17, 2009 settlement agreement, which was filed by Student's counsel in OAH Case No. 2008110402, on March 21, 2009. (See Gov. Code, § 11515.) The settlement agreement contained a confidentiality clause, however, the clause does not apply to disclosure related to enforcement of the agreement.

to an SDC for SLD pupils at another middle school, Bethune Middle School (Bethune), for the remainder of the 2009-2010 school year, with school-to-school transportation. As part of the agreement, Mother consented to the implementation of Student's March 16, 2009, IEP and the amendment IEP of October 22, 2009. Mother and District agreed to hold an IEP after Student's enrollment at Bethune to document the settlement agreement, and to review Student's needs in the area of social-emotional functioning, including Student's progress on her behavior support goal, and to consider Student's need for pupil counseling.

15. As part of the December 3, 2009, settlement agreement, Mother waived all claims related to Student's educational program through the date of the agreement, December 3, 2009.

16. On December 31, 2009, District's duty to provide Student intensive instructional educational services expired, according to the terms of the March 19, 2009, settlement agreement.

17. Student achieved the following grades during the fall semester at Muir in 2009: D in English, A in Math, B in History, C in Health and Art, and F in Physical Education (PE).

18. At hearing, Mother testified that sometime during 2009, Student's teacher completed an exam for Student. She claimed that the same teacher shared Student's exam at an IEP team meeting in 2009 to show Student's math progress. When Mother reviewed the exam and noticed that the handwriting was that of a professional, and not her daughter, the teacher admitted that it was her handwriting, not Student's handwriting and agreed to retest Student, but never did. Mother could not identify the time of year or the IEP team meeting. Mother's testimony was not supported by any documentary evidence, including the IEPs, or corroborated by other witnesses.

19. Beginning on January 11, 2010, Mother took advantage of free extracurricular tutoring services provided by a District-funded vendor to all pupils, as part of a program referred to as Beyond the Bell. Beyond the Bell tutoring services were not part of Student's special education program as set forth in her IEP, or intensive one-on-one designated instructional services (DIS) provided for in her March 19, 2009, settlement agreement. The tutoring services focused on Student's seventh grade-level progress according to the California content standards for seventh grade, and focused on improving pupils' reading comprehension, grammar, and writing, by at least 10 percent from pupils' pretest assessment score. Student was administered an informal assessment tool to measure her command of California seventh grade reading comprehension, grammar, and writing content standards. Student achieved a score of 43 percent, and based upon her score, the tutoring service provider set a goal for Student to improve by 10 percent.

20. In February 2010, as provided for in Mother's settlement agreement with District, Student transferred to the SDC at Bethune (Bethune). Student began Bethune at the conclusion of winter break, which was tied to Student's year-round school schedule.

21. Student's school day was the same as all District pupils. The school day began at 7:25 a.m. and ended at 2:32 p.m. District imposed a shortened school day for all pupils, one day per week, for administrative matters, including teacher meetings.

22. As of March 19, 2010, Student received two hours a week of Beyond the Bell tutoring services in reading and math, for a total of 18 hours. On March 19, 2010, the tutor provided Mother with written observations of Student's performance. The tutor informed Mother that Student had trouble reading fluently and accurately, could not master pronunciation, and her speech tended to be slow. She reported to Mother that Student had demonstrated deficiencies in reading comprehension, and her written work product lacked clarity because of errors in grammar, spelling, and syntax. The tutor

also informed Mother that Student's tendency to reverse the letter b and d, "may be a sign" of dyslexia.

23. The qualifications of Student's Beyond the Bell tutor are unknown, and it is unknown whether the tutor was aware of Student's status as a special education pupil, or of her IEP.

24. On March 19, 2010, an IEP meeting was held, the first at Bethune. All necessary members of the IEP team were present. Student's parents attended, and were provided Spanish-language interpretation.

25. The IEP team relied upon teacher's observations and work samples to measure Student's present levels of performance since she was new to Bethune. The IEP team did not measure Student's progress on her previous goals because they did not have an adequate time to observe her.

26. The IEP team reported on Student's present levels of performance in reading. Student was able to use decoding skills to sound out unfamiliar words and made a great effort to re-read a passage to decrease the number of mistakes. She was weak in reading comprehension and had a difficult time expressing orally and in writing what she had read. She required repetition of key concepts and vocabulary, and accommodations, including extended time, shortened assignments, visuals, scaffolding information, repetition of instruction, reading directions out loud and graphic organizers.

27. The IEP team reported on Student's present levels of performance in writing. Student was able to write complete sentences including appropriate capitalization and punctuation. She could describe details about pictures and classroom demonstrations. She struggled to write when she did not understand the writing prompt or questions. She required prompts to provide supporting details. She had difficulty

spelling unfamiliar words. Accommodations similar to those specified for reading were recommended.

28. The IEP team also reported on Student's present level of performance in math. Student knew her basic addition and subtraction facts and basic multiplication and division facts, but needed assistance with positive and negative numbers and the order of operations when solving a problem with more than one operation. The IEP team recommended small group instruction, calculators, math tables and graphs, preferential seating to minimize distraction and redirect Student, re-teach and pre-teach lessons, and visual models.

29. The IEP team also reported on Student's adaptive or vocational needs. Her teachers observed that Student had a small group of friends that she was comfortable with, but that she occasionally interacted with others. The IEP team did not mention any maladaptive behaviors or conduct. Her teachers also observed that Student was sometimes forgetful about bringing her personal school supplies to class, particularly her history book, which resulted in incomplete homework.

30. The IEP team recommended goals in reading, writing and math. The reading goal required Student to employ a prewriting strategy for use in expository answers, essay writing or reports, to clarify meaning, such as note taking, outlining, and graphic organizers. The written language goal required Student to write a three-paragraph persuasive essay with an introductory paragraph describing her position, and a supporting paragraph summarizing evidence. The IEP team recommended a math goal where Student would be able to express the numbers absolute value as the distance of the number from zero when given a series of positive whole numbers

31. The IEP team developed a vocational goal, which required student to bring her supplies to school every day, including textbooks, writing implements, notebook and homework.

32. In addition to reading and writing goals, the IEP team also developed a master plan for Student, as an English language learner, to improve her English listening, speaking, reading, and writing skills to be administered by her SDC teacher. The English language development goal included in the master plan required Student to retell stories and speak about school related activities using expanded vocabulary, descriptive words and paraphrasing. It required Student to ask and answer instructional questions using simple sentences.

33. The IEP was silent on how Student's progress on her goals would be reported to Mother.

34. The IEP team recommended that Student remain in the SDC placement for SLP pupils, with accommodations. No mention was made of continuing the BSP.

35. Mother provided information to the IEP team. Based upon the letter she received from the tutor, Mother informed the IEP team that Student was diagnosed with dyslexia. She also informed the IEP team that Student suffered migraines. The IEP team acknowledged Mother's report of Student's dyslexia and migraines and noted that the dyslexia and migraines impacted Student's involvement in general education.

36. On March 23, 2010, Mother consented to the IEP.

37. The IEP did not specifically acknowledge the December 3, 2009, settlement agreement, or any discussion of Student's social-emotional needs as required by the settlement agreement. However, District team members referred Mother to the South Central Los Angeles Regional Center (SCLARC), a non-profit tasked with administering state services for individuals with certain developmental disabilities. Unlike school-based services, California Regional Centers (Regional Centers) provide services to assist individuals with a narrow category of developmental disabilities and their families to live at home and access their communities. The criteria used for determining whether an

individual qualifies for Regional Center services differs from the eligibility criteria for special education services.⁵

38. After the IEP team meeting, in or about March 2010, Mother accused Student's teacher of sexual harassment of Student.

39. On April 13, 2010, the SCLARC service coordinator conducted an intake social assessment. The SCLARC service coordinator reviewed Student's medical history and noted Student suffered from migraine headaches, but took no medication for the headaches. He noted that Student had no history of seizures or cerebral palsy. Mother did not report a history of seizures.

40. The SCLARC service coordinator interviewed Mother about Student's homework practices. Mother reported that Student did homework at home as soon as she arrived from school.

41. Mother reported to the SCLARC service coordinator that Student heard and saw things, and as a result wanted to be around Parent all the time. Student disputed Mother's report. Student admitted to the SCLARC service coordinator that she was untruthful about hearing and seeing things so that she could get attention.

42. Mother was provided the SCLARC intake report, but did not supply District with a copy of the report prior to the hearing.

43. On April 14, 2010, Mother met with administrators at Bethune. Mother discussed her charge of sexual harassment. Specifically, Mother believed that a teacher had been staring at Student's buttocks, and after Mother reported it, was now retaliating

⁵ Whether Student has a developmental disability entitling her to eligibility for Regional Center services is governed by the Lanterman Developmental Disabilities Service Act (the Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.

against Student. District offered to transfer Student from that teacher's class, but Mother reported that Student declined the transfer as it would require a change in her school schedule. Mother discussed her concerns with the Beyond the Bell tutoring program. She notified them that the Beyond the Bell tutoring was moving too fast for Student. School administrators were not aware that Student had been participating in the District-wide after school Beyond the Bell tutoring program. District administrators committed to explore the availability of special education teachers for this program, but it is unknown whether special education credentialed teachers were made available to Student.

44. On June 1, 2010, SCLARC funded a psychological evaluation of Student by a clinical psychologist, Thomas L. Carrillo, Ph.D., to ascertain whether Student qualified for Regional Center services. The assessment for Regional Center services focused on whether Student's intellectual ability and adaptive social skills were low enough to qualify her under the category of mental retardation.

45. Dr. Carillo administered standardized assessments measuring cognitive abilities and achievement, interviewed Student and Mother, and made clinical observations. He found Student's overall intellectual ability to be in the low normal range, or borderline. He found the variation in her low normal receptive ability, normal visual and perceptual abilities, and notably delayed analytic reasoning abilities, to be consistent with District's designation of Student as a pupil with a specific learning disability.

46. Dr. Carillo administered a standardized assessment to measure Student's adaptive skills, the Vineland Adaptive Behavior Scales–Second Edition (VABS-2). Dr. Carillo measured three areas of adaptive functioning: communication, daily living and socialization skills. Student performed in the low normal range in the area of daily living skills, the borderline range of delay in the areas of communication and socialization. Dr.

Carillo found Student's communication skills "impoverished". He found her behavior composite score of 75 to mean that Student was within the borderline range of delay.

47. Dr. Carillo determined that Student met the psychological profile of an individual with a depressive disorder (not otherwise specified, or NOS). He observed Student to possess limited emotional energy and to present a flat affect.

48. Dr. Carillo recommended that Student continue to receive District-based special education services, and participate in psychotherapeutic intervention to address her mood disorder. His findings were memorialized in a report which was provided to Mother. Mother did not provide the SCLARC psychologist's report to District prior to the hearing.

49. Student received the following grades for the 2010 spring semester at Bethune: C's in English, Math, History, Science, and Art, and A in PE.

2010-2011 SCHOOL YEAR

50. Student advanced to the eighth grade at Bethune for the 2010-2011 school year. She continued her placement in the SDC for all academic subjects.

51. Student's special education English teacher at the time was Grace Bachinela. Ms. Bachinela is a credentialed special education teacher with state credentials for working with mild-moderate and moderate-severe special education pupils. Her SDC English class was comprised of pupils with mild-to-moderate special education needs. All Ms. Bachinela's pupils were eligible for special education due to SLD. Her class was held every other school day for two hour periods. During the 2010-2011 school year, Ms. Bachinela had upwards of 13 pupils, including Student, and was assisted by one classroom aide. Ms. Bachinela periodically communicated Student's progress to Mother, through report cards, and recorded telephonic phone messages about classroom activities that were transmitted to Mother's phone. Ms. Bachinela also assigned Student homework. Many pupils completed homework at school, but those

who needed extra time took their assignments home. All pupils were required to maintain a homework notebook to take between home and school.

52. On September 9, 2010, Mother signed another contract with the District-funded vendor for 20 sessions of District-wide after school Beyond the Bell reading and writing tutoring services. This time the services focused on California eighth grade content standards in the area of grammar, and comprehension. Student's pretest score was 27 percent. No evidence was presented that Student accessed these services.

53. On September 28, 2010, SCLARC found Student ineligible for Regional Center services.

54. On November 24, 2010, Student was examined by a neurologist as a result of Mother's concerns that Student suffered from a seizure disorder. Mother reported to the neurologist that Student had been suffering from throbbing headaches for one year, or since November 2009, two to three times a week, lasting two to three hours, which resulted in dizziness and nausea. The neurologist concluded that Student suffered from a common migraine and prescribed medication, which is often also prescribed for individuals suffering from epilepsy.

55. On December 10, 2010, District convened Student's annual IEP team meeting. All required team members were present. Mother and Student attended. Mother was provided with Spanish-language interpretation. Ms. Batchinela attended.

56. The IEP team reviewed Student's progress on her previous goals. Student met her math and vocational goals, and partially met her reading and writing goals.

57. The IEP team reviewed Student's present level of performance based upon her results from a standardized test of achievement, the Woodcock Johnson III (WJ-III), statewide assessments administered to all pupils, and informal teacher observations. When reading, Student could identify words and letters, and could pronounce words properly, but had deficits in reading comprehension, including processing complex

words and sentences. Student could answer literal questions, but was challenged by grade level inferential questions. Student's migraines also impacted her performance. The teacher employed a variety of tools to further her progress, including word banks, graphic organizers, sequencing diagrams, small groups, extended time, and vocabulary building exercises involving using words in class discussion.

58. The IEP team reviewed Student's present level of performance in writing. Student did not meet her previous goal of practicing prewriting strategies. She did not meet her previous written language goal of developing a persuasive composition, but did meet her goal of stating the position and summarizing evidence. Student could write basic sentences using the subject-verb-predicate format, but struggled with expressing her ideas in writing activities due to weak vocabulary skills and grammar. As with reading, the teacher utilized a variety of tools to improve Student's writing, including graphic organizers, Venn diagrams, charts, small groups and thinking maps.

59. The IEP team reported on Student's present levels of math performance. Student could calculate basic math problems involving addition and subtraction with regrouping, but she often forgot the basic procedure for solving math problems. Student is provided with charts, manipulatives, a calculator when needed, extended time for assignments, a small group setting, and scaffolding instructions.

60. The IEP team reviewed Student's present level of performance in vocational skills. The IEP team reported that Student was easily distracted, lost focus and could not produce quality work. She needed to be consistent in writing her homework in a notebook, not just a torn paper or page. Student's migraines also affected her focus. To address these concerns, Student required reminders to transfer her homework to a notebook, and needed to be seated away from distractions.

61. The IEP team developed reading, writing, math and vocational goals to address Student's deficits. A reading goal was developed to further Student's ability to

define and restate correctly specialized vocabulary words. The IEP team developed a written language goal to further Student's ability to develop and use a writing rubric for self and peer editing to correct spelling, grammar and punctuation errors. The IEP team developed a mathematics goal to further Student's ability to write and solve algebraic equations using word problems. The IEP team developed a vocational goal for Student to finish her assigned tasks with 90 percent accuracy.

62. The IEP provided that written reports of Student's progress would be given to parents either at the time of IEP benchmark goal dates, or with Student's report cards.

63. The IEP team offered Student placement in SDC's for all academic subjects, but provided for interaction with general education pupils by offering one general education elective, and P.E.

64. Parent signed and consented to the IEP. Mother did not express any concerns about depression or dyslexia.

65. On December 28, 2010, Mother and Student participated in an intake interview with psychological counselors at Children's Hospital. Mother reported her concerns about Student's learning disability, dyslexia, depression, and stress. She stated that Student did not like her life, was bored, sensitive, and restless. Mother explained that Student's depression was triggered by her learning disabilities, maladaptive coping with migraine headaches, and the alleged sexual harassment by a teacher. The intake evaluator interviewed Student and reported that she displayed symptoms of increased irritability, social withdrawal, and headaches triggered by stressors, symptoms that could be associated with abuse. Student reported that she wanted to be more outgoing, "less shy," communicate better, and improve her academic functioning so that she can graduate from middle school.

66. Children's Hospital diagnosed Student with Depressive Disorder Not Otherwise Specified (NOS) and began counseling sessions with Mother and Student

based upon an agreed upon treatment plan to increase Student's emotional coping skills, which impaired her ability to function academically and interpersonally.

67. On January 13, 2011, as a consequence of Mother's report and Student's emotional affect at her intake interview, Children's Hospital filed a mandated report of suspected child abuse with the Los Angeles County Department of Children and Family Services (DCFS).

68. On February 17, 2011, Evan Watanabe, District school psychologist, conducted a psychoeducational assessment of Student at Mother's request due to her concerns about Student's lack of academic progress. The purpose of Mr. Watanabe's assessment was to identify Student's present level of socio-emotional functioning to determine whether Student required DIS counseling at school

69. As part of his assessment Mr. Watanabe interviewed Mother. Mother reported that Student was diagnosed with a seizure disorder and suffered from migraine headaches, but did not provide any supporting documentation. Mother reported that Student hit her head on things if she had headaches, but did not do this at school because she was too embarrassed. Mother reported that Student was depressed because of her poor academic performance. She reported that Student had many friends at school. Mother did not inform Mr. Watanabe of Student's assessments with SCLARC, or provide him with the reports.

70. Mr. Watanabe interviewed Student's teachers as part of his assessment. He interviewed Student's English teacher, Ms. Bachinela. Ms. Bachinela reported that Student struggled with multiple step directions, and could work independently with individual instruction and scaffolding techniques. Ms. Bachinela reported that Student submitted her homework most of the time, and organized her assignments with monitoring and extra time. She reported that Student lacked confidence in communicating with others. Mr. Watanabe also interviewed Student's history teacher.

The history teacher's observations were similar to Ms. Bachinela's observations. Student worked best when supervised and when paired with another pupil. She was often off-task and must be reminded to complete her work and to pay attention. She required prompting and monitoring. In contrast to Ms. Bachinela's report, Student "rarely" submitted completed work in her history class, and rarely completed homework.

71. Ms. Bachinela also completed the standardized rating scales for Mr. Watanabe, referred to as the Behavior Assessment System for Children–2, (BASC-2). She rated Student at-risk for somatization, as Student tended to be overly sensitive and complained about relatively minor physical problems. Mr. Watanabe concluded that Student's behavior might be consistent with her reported seizure disorder or migraines. Ms. Bachinela rated Student at-risk on the functional communication subtest, indicating difficulty expressing ideas and communicating in an easily understandable way.

72. Student completed the BASC-2 self-report. Student's responses indicated she was at-risk and clinically significant on the attention problems subtest. She reported that she could not maintain attention and was easily distracted. Student's responses on subtests measuring her sense of inadequacy and self-reliance indicated she was at-risk due to her perception that she was unsuccessful at school, her low expectations of achievement, limited personal dependability, and lack of perseverance.

73. Mr. Watanabe reached the following conclusions from his interviews, assessments, and record review: Student was generally social and compliant, but had inconsistent work habits and varied performance between classes. She required supervision and frequent prompts to complete class assignments. Student was soft spoken, had limited confidence in her ability to succeed at school, a perception of diminished control, and did not advocate for herself. Her migraine headaches and reported seizure disorder are a source of anxiety. Student's motivation was compromised by her lack of self-confidence.

74. Mr. Watanabe recommended school-based DIS counseling services for Student to build her self-esteem, self-advocacy skills and goal setting capabilities.

75. On February 23, 2011, an IEP team meeting was convened to discuss Mr. Watanabe's report and to amend the annual IEP of December 10, 2010, if necessary as a result of his recommendations. All required IEP team members were present, including Ms. Bachinela and Mr. Watanabe who presented his report. Mother attended the IEP team meeting and was provided Spanish-language interpretation. Based upon Mr. Watanabe's recommendations, District offered Student weekly, 30 minute, DIS school-based counseling services. The IEP team developed a counseling goal which required that she identify with the counselor's assistance, those areas in her life that are most problematic and develop, two or more ways to cope with her problems.

76. Mother signed and consented to the February 23, 2011, amendment to the December 10, 2010 IEP.

77. At hearing, Ms. Bachinela elaborated on her classroom observations of Student at the time of the IEP. Student had reading challenges, but Ms. Bachinela did not attribute them to dyslexia, which she understood to negatively affect reading fluency due to the pupil's inversion of letters. However, she did not have expertise in diagnosing dyslexia. Ms. Bachinela observed that Student worked well in small groups on collaborative activities, and was capable of working independently with guidance. Student was easily distracted and needed reminders to consistently write in her notebook. Student required prompting to re-focus, but could refocus with a prompt. Student occasionally received one-to-one assistance.

78. Ms. Bachinela provided credible testimony. Ms. Bachinela was aware of Student's capabilities from her classroom observations, attendance at IEP team meetings, and her administration of the standardized academic assessment, the Woodcock Johnson III (WJ-III).

79. Student began counseling services as specified in the February 23, 2011, IEP. Student attended counseling sessions, unless she was absent from school.

80. On March 3, 2011, Student participated in District-wide academic diagnostic assessment test in math, referred to as Standardized Testing and Reporting (STAR) Math. The STAR tests are used to assess mastery of state content standards. Student's math skills were reported as the equivalent of a pupil in the fifth month of second grade. Student achieved a percentage rank of one percent. Student's reported skills were limited to regrouping when adding and subtracting in the two-digit and three-digit numbers. The report recommended that Student receive additional math instruction each day, more time with physical models of concepts and procedures, and that new material be introduced only after mastery of a skill. The STAR Diagnostic report was printed and made available on March 25, 2011.

81. As of March 30, 2011, Student attended five sessions of counseling at Children's Hospital. She failed to show to six sessions. Mother attended three sessions.

82. By April 2011, DCFS had completed its investigation of Mother's report of sexual abuse and determined that it did not merit further action.

83. On April 1, 2011, as a result of Mother's request that SCLARC reconsider its determination that Student was not eligible for Regional Center services, SCLARC's service coordinator conducted a social assessment update and prepared a report. Mother received a copy of the report, but did not produce the report to District prior to the hearing.

84. During her interview with SCLARC's service coordinator, Mother reported to SCLARC, for the first time, that Student started to have seizures about a year ago, or about March of 2010. In response to the service coordinator's inquiry as to why Mother had not mentioned the seizures before, Mother responded that she did not know they were seizures. Mother reported that the seizures occurred twice weekly.

85. During her April 1, 2011, interview with SCLARC's service coordinator, Mother reported to SCLARC, also for the first time, that she filed a sexual harassment claim against Student's teacher, a year earlier, or March 2010. She reported to the service coordinator that teacher took Student to the back of the room and said, "You don't love me." She reported that Student's behavior changed after the incident and has not improved. She reported that she filed a police report and the teacher was removed from the school.

86. At the time of the interview with SCLARC's service coordinator, Student's diagnosis of migraine headaches remained unchanged. She was prescribed a high dose of ibuprofen and twice daily doses of seizure medication.

87. As part of his social assessment update, the SCLARC service coordinator asked Student to write a letter detailing what she wanted to do this weekend. With many spelling and grammatical errors, Student wrote that she "just to have fun," wanted to go to the movies with her family, go to her cousin's and friend's houses, go to the pool and go to the mall. She communicated that she wanted to be with her family and do things that "we never did just to be happy."

88. Student erased and rewrote many words in her letter. Student first wrote "did" as "bid" and changed the "b" to "d." Mother did not provide the report or letter to District prior to the hearing.

89. On April 6, 2011, Beatrix Wagner, Psy.D., a clinical psychologist, performed a psychological assessment of Student to determine her levels of cognitive and adaptive functioning as part of SCLARC's reevaluation of Student's eligibility for Regional Center services. As part of her assessment Dr. Wagner interviewed Student and Mother.

90. Student's homework habits were discussed. Student reported that she "sometimes" did her homework, but other times, she "forg[o]t" she ha[d] homework." She understood that she got bad grades when she did not complete homework.

91. Student's emotional status was discussed. Mother reported to Dr. Wagner that Student was depressed due to her SLD and enrollment in special education. Mother reported that Student was "embarrassed" to tell her friends that she was in special education and that her friends were not aware of her special education placement. Mother also reported that Student was embarrassed to take the bus transportation offered because it was a "special education bus." Mother drove Student to and from school to accommodate her. Student acknowledged that she was sad and embarrassed about being enrolled in special education. She admitted to periods of poor concentration due to difficulties with memory and processing of verbal information, which Dr. Wagner noted were possibly symptomatic of depression.

92. Student's alleged abuse during her seventh grade year was discussed. Mother now reported that last school year, Student's seventh grade teacher showed inappropriate movies which contained nudity and would have Student sit in the back of the class with him. Student denied physical or sexual abuse.

93. Student's history of migraines was discussed. Mother reported that Student had been experiencing seizures, and that she had episodes where she was disoriented, did not hear her name called, and did not recall what happened during the last few minutes. She reported that Student started hitting her head against walls and tables at home about the same time of the incident with her teacher. Student admitted to hitting her head when she experienced headaches because it helped reduce the pain.

94. Dr. Wagner administered the Wechsler Intelligence Scale for Children-IV (WISC-IV), a standardized assessment to measure Student's cognitive functioning along verbal and nonverbal domains. The assessment measures functioning in four specific domains: verbal comprehension, perceptual reasoning, working memory, and processing speed. She performed in the average range on the processing speed index, which meant that her visual perception of abstract stimuli, visual sequencing and visual-

motor coordination were adequately developed for her age. Likewise, Student performed in the average range on the perceptual reasoning index, meaning that her visual perception of abstract stimuli and broad visual and fluid intelligence were adequately developed for her age. Student performed in the extremely low range on the verbal comprehension index, which meant her verbal abilities were significantly underdeveloped for her age. She performed in the extremely low range on the working memory index, meaning that her auditory perception of complex verbal stimuli, working memory, short-term memory and sequential processing of information, were under developed for her age. As a result of her testing, Dr. Wagner concluded that Student had difficulty learning by hearing information, remembering what she was told or taught, and repeating information she was taught.

95. Dr. Wagner found that her findings were consistent with District's designation of Student as a pupil with a specific learning disability and her eligibility for special education.

96. Dr. Wagner also measured Student's adaptive functioning by administering the standardized assessment, the Vineland Adaptive Behavior Scales-II (VABS-II). On the daily living skills domain, which measures her ability to take care of hygiene, perform household chores, and navigate her day independently, she scored in the moderately low range. On the social domain index, which measures her ability to communicate, empathize and understand social cues, she scored within the moderately low range.

97. To determine whether Student's cognitive functioning was consistent with a diagnosis of an intellectual disability, Dr. Wagner relied upon the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, (DSM-IV-TR). Dr. Wagner concluded that Student meets the DSM-IV-TR criteria for borderline intellectual

functioning, based upon her extremely low scores in verbal comprehension and working memory, and her resulting challenges with reading, writing and memory.

98. In the school environment, Dr. Wagner recommended that Student take class notes, utilize visual representations of abstract concepts, to increase her retention, and be provided lessons through visual presentations, and given the opportunity to replicate the lesson.

99. Dr. Wagner recommended that her assessment be shared with District to assist with academic placement and progress.

100. Mother did not provide the assessment to District before the hearing.

101. On May 4, 2011, Anthony L. Mendoza, M.D. conducted an intake medical evaluation for SCLARC to review Student's eligibility for Regional Center services.

102. Dr. Mendoza reviewed Mother's claim that Student had a seizure disorder and concluded that it was not supported by his record review or examination. Mother's report to Dr. Mendoza differed from her previous reports to SCLARC examiners. Mother now stated that Student's seizures started three years ago or earlier, not after a 2010 reported incident with a teacher. Mother made no mention of the causal connection between the purported teacher incident and Student's seizures. Mother reported that Student had a seizure once a week, not twice weekly as previously reported. Dr. Mendoza's impression was that Mother was confused by the migraine medication prescribed which is also used for convulsions. Dr. Mendoza recommended that Mother videotape the seizure and bring it to her physician to confirm the diagnosis.

103. Dr. Mendosa observed Student's behavior during his intake to be happy, socially appropriate, and comfortable.

104. On June 8, 2011, SCLARC rejected Student's request for Regional Center services, concluding that she did not meet the definition of a developmental disability under California law. SCLARC found that although Student was diagnosed with a

borderline intellectual functioning, she did not have a substantial disability closely related to mental retardation or required treatment similar to that required for individuals with mental retardation. In rejecting Student's request for Regional Center services, SCLARC determined that Mother's claim that Student suffered from seizures was not supported.

105. During the 2010-2011 school year, Mother received periodic report cards of Student's progress in her classes, as did all families at Bethune. There was no evidence that Mother received written reports of Student's progress on her goals, other than what she received at IEP team meetings. Mother did have frequent opportunities to obtain information about Student's progress through her interaction with District administrators and teachers. In addition to IEP team meetings, Mother spoke with Bethune's special education coordinator, referred to as the Bridge Coordinator, Ms. Nicole Cunningham. As Bridge Coordinator, Ms. Cunningham supervised the special education paraprofessionals and coordinated the IEP team meetings for all special education pupils at Bethune. Ms. Cunningham spoke with Mother about once every two months during the school year either by telephone or in person.

106. On or before July 8, 2011, Mother appealed SCLARC's denial of eligibility for Regional Center services on behalf of Student by filing a request for a fair hearing with the Office of Administrative Hearings, Case No. 20100110552.

2011-2012 SCHOOL YEAR

107. For the 2011-2012 school year, Student advanced to the ninth grade at Fremont High School (Fremont). As in middle school, Fremont imposed a shortened school day for all pupils once a week to conduct teacher training and address administrative matters.

108. At Fremont, Student was enrolled in SDC's for SLP pupils for all academic subjects and was provided a choice of a general education elective.

109. Student's SDC math teacher was Daron La Franchi. Ms. La Franchi was assisted by two classroom aides, and one additional aide devoted to another pupil. Ms. La Franchi taught special education English and math with an emergency credential for mild-moderate disabilities. At the time of hearing, she was completing her masters of arts degree in special education. Student was one of 20 pupils in Ms. La Franchi's SDC math class. Ms. La Franchi was a credible witness. She demonstrated that she had an opportunity to closely observe Student, was aware of her daily challenges, file, and was candid about the possible gaps in Student's early math education.

110. Ms. La Franchi was also Student's case manager, which entailed tracking her special education program and services, including interacting with her teachers, monitoring her goals, tracking her services, and organizing IEP team meetings. When Ms. La Franchi was assigned as Student's case manager, she reviewed her available educational and medical records. Student's file did not contain any reports or assessment generated for SCLARC. She did not find any references to seizures or depression. She did not find any Regional Center documents.

111. It was Ms. La Franchi's practice to assign math practice work sheets to her pupils. She assigned class work which was often completed in small groups. She also assigned homework. Student struggled in math. She confused addition with multiplication and generally applied principles of addition and subtraction to math problems even when the problems required multiplication.

112. Student chose cosmetology as an elective. Over 30 pupils were enrolled in the cosmetology class, and the IEP did not require modification to Student's classroom lessons. Although Student's eligibility as a special education pupil was listed on the class roster provided to the teacher, Ms. La Franchi did not provide the teacher with her IEP at the start of the 2011-2012 school year, and there is no evidence that any efforts were made to institute the accommodations provided in her IEP.

113. On September 29, 2011, the Office of Administrative Hearings heard Student's appeal of SCLARC's denial of eligibility for Regional Center services. A decision was issued on October 7, 2011, denying Student's appeal and affirming SCLARC's determination that Student was not eligible for Regional Center services.

114. On October 14, 2011, the IEP team met. All necessary members of the IEP team were present including Student and Mother, Student's special education teacher, Ms. La Franchi, and the school psychologist, Mr. Garcia. Mr. Garcia provided Spanish-language interpretation of the meeting for Mother.

115. Student's progress on her previous goals was reviewed. Student did not meet her math goals. She needed more practice with simple math facts. She did not meet her reading goal. She needed more practice summarizing information. She did not meet her writing goal. She needed more practice with persuasive writing. She did not meet her vocational goal. She needed to be reminded about writing homework in a notebook.

116. Student's present levels of performance in math were reviewed. Student's math status was consistent with the STAR results. She could perform simple addition and subtraction. She required a multiplication chart to perform simple multiplication and division. She needed charts, manipulatives, a calculator, extended time, small group setting, and scaffolding techniques to progress. She was challenged by her processing deficits and her migraines.

117. Student's present levels of performance in reading were reviewed and her fluency reported to be at a fourth grade level. She needed guided notes, scaffolding, and a small group setting to progress.

118. Student's present levels of performance in writing were reviewed, and it was determined that she could write complete sentences that use simple, correct punctuation and capitalization, but she needed to improve her ability to form several

paragraphs into a cohesive text with clear topic sentences and supporting evidence. Again, a small group setting, and sitting close to the teacher, were deemed important to improve her ability to engage in the lesson.

119. Student's present levels of social-emotional behavior were reviewed. Student was observed to adjust well to Fremont. She had made friends, was respectful in class and followed directions. She was easily distracted by peers and was not motivated to perform school work. She needed prompting to complete school work. The IEP team acknowledged her history of low self-esteem, limited confidence in her ability to succeed, and lack of belief that she can control her success.

120. The IEP offered the following placement, services, and supports: placement in SDC classes for all academic subjects, including math, science, reading and writing; participation in one general education elective and physical education each semester; one 30 minute session of DIS counseling per week, for Student to focus on her self-esteem skills and goal setting; instructional accommodations consistent with past accommodations, including graphic organizers, concepts and word maps, preferential seating, frequent comprehension checks, shortened assignments, extended time, step-by-step instructions for solving problems, drill and practice, scaffolding, supplemental materials, and modeling.

121. As part of the list of "other supports", including non-academic and extra-curricular activities, District offered "participation in" general education Fremont programs including, Beyond the Bell intervention programs, school based tutoring, and field trips.

122. The IEP included measurable annual goals in all areas of need. Specifically, the IEP team developed math, reading and writing goals to improve her ability to solve word problems with algebraic equations, comprehend reading passages, and edit writing assignments for spelling, grammar and punctuation errors, and a counseling

goal to enhance Student's motivation to learn, by working with the counselor to develop a strategy to address problems that she has the ability to solve.

123. The IEP provided that Mother would be kept informed of Student's progress on her goals periodically and in writing, either at the time of each benchmark goal date, or with each report card.

124. Mother consented to the IEP, but documented her concerns in writing in the IEP. Mother expressed her concern with Student's education and her fourth grade reading comprehension. She stated that Student could not understand the lectures and required assistance. She requested individual instruction so that Student could perform at grade level. She stated that Student required an independent psychiatrist due to her sexual harassment in seventh grade. She complained of the inadequacy of school-based counseling services and requested outside psychotherapy services.

125. At hearing, Mr. Garcia elaborated on the IEP team's discussion with Mother of Student's need for psychological services. Mother discussed her claim that Student was sexually harassed in March 2010. Mr. Garcia explained that school counseling was limited to supporting Student's access to her education. He recommended that Mother utilize other community resources for intensive family therapy, and to address long-standing problems arising from any sexual harassment. Mr. Garcia referred Mother to the psychiatric social worker assigned to the school. He also contacted the psychiatric social worker on her behalf who unsuccessfully attempted to contact Mother. After the IEP team meeting, there is no evidence that Mother accessed the additional resources Mr. Garcia recommended.

126. At hearing, Ms. La Franchi confirmed that Student had not mastered the basics of multiplication and attributed her deficit to mistakes in her earlier elementary school education, where the foundations for multiplication are established, and the challenges presented by her disability. Ms. Franchi conceded that Student had not made

much progress. Ms. La Franchi worked to keep her motivated by redirecting her to school work when she was distracted.

127. Ms. La Franchi also attributed Student's lack of progress to her high absenteeism. During the first half of 2011-2012 school year, Student was absent approximately 17 full days. In addition to her full day absences, she was absent for part of the day over 20 times, which meant she did not attend all her classes.

128. During the first half of the 2011-2012 school year, Student struggled in her general education elective, cosmetology. She could not absorb the lessons in the large general education classroom. At hearing, Student admitted that she avoided the class because she could not keep up with class lessons. Once District learned of Student's struggles in the class, it offered to change Student's elective. Student declined. Student received a grade of F in cosmetology.

129. Mr. Garcia provided counseling services as required by the IEP when Student was in school. Student's counseling sessions with Mr. Garcia were scheduled during cosmetology. Mr. Garcia met her at the class. By avoiding cosmetology, she also missed counseling.

130. At hearing, Mother testified that the services were part of the IEP, and that she did not receive these services, but her testimony was not corroborated. No evidence was presented regarding whether Student attempted, but was denied, access to Beyond the Bell or any other school-based tutoring after the October 14, 2011, IEP, or whether these services were available to any pupil during the 2011-2012 school year.

131. At the time of the hearing, Student, like all other Fremont pupils, received a report card of her grades as evidenced by her failing grade in cosmetology. No evidence was provided as to whether Student received a written progress report of her goals outside of the IEP team meetings.

MOTHER'S HEARING TESTIMONY

132. Mother was the principal witness for Student's case. While her concern for Student's well-being was genuine and heartfelt, her testimony about past events was in many material respects inconsistent with documentary evidence, including her earlier statements to Student's assessors, or District administrators. Mother insisted that SCLARC's recommendation that Student was ineligible for Regional Center services was overturned by the ALJ in his decision, when it was not. She insisted that the ALJ found that Student had dyslexia, when he did not. Her statements regarding the basis of her claim that Student was sexually harassed varied over time. At first, Mother told administrators that a teacher was staring at Student's buttocks. Later she reported that Student was exposed to explicit classroom videos, and that the teacher asked Student whether she loved him. At hearing, Mother testified that Student viewed a video where a male was displaying his genitalia. Likewise her attempt to link Student's so-called seizures to sexual harassment contradicted her interviews with SCLARC assessors. Mother's recollection of the genesis of Student's seizures also varied from one to three years, either before the alleged sexual harassment or after. Mother's refusal to acknowledge her attendance at the February 23, 2011, IEP team meeting because the signature page was missing from the IEP, negatively impacted her credibility, especially when she was given numerous opportunities to reconsider her response. Later, when the signature page was shown to Mother, she reluctantly conceded that she was present.

133. Mother's view of events became more questionable when compared to the testimony of Student and District witnesses. Mother steadfastly insisted that Student was not provided the psychological counseling services District offered during the 2010-2011 and 2011-2012 school years. Student testified that she received counseling services. Student's testimony was further supported at hearing by District counselors. Mother's claim that she provided District staff the Regional Center file, including the

SCLARC assessments, before the hearing, was also not reliable, as the Regional Center assessments were not referenced by Mr. Watanabe or the IEPs, and were not found in the cumulative file reviewed by Ms. La Franchi. Accordingly, Mother's testimony was given less weight than that of District witnesses.

LEGAL CONCLUSIONS

BURDEN OF PROOF

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

Issue 1: Denial of FAPE due to failure to comply with settlement agreement

Issue2: Denial of FAPE by failing to provide Student with independent assistance in reading.

2. As to Issue One, Student contends that District failed to provide Student a FAPE by failing to comply with a settlement agreement which provided for intensive educational instruction in reading, writing and mathematics. Student contends that the hours of instruction offered were never completed. District disagrees, and maintains that it fulfilled its obligations under the settlement agreement and that any purported obligation that remained was extinguished by a subsequent settlement agreement.

3. As to Issue Two, Student contends, as in Issue One, that District failed to provide Student intensive educational instruction in reading that she required to advance to grade level, particularly reading instruction provided through Beyond the Bell. To further support her claim that District failed to provide Student a FAPE in reading instruction, Student claims that District ignored and failed to address Student's dyslexia. District disagrees, and maintains that that the Beyond the Bell reading program

was not a special education program, and was not offered as part of Student's IEP. District further maintains that notwithstanding Student's unsupported claim that she had dyslexia, District provided Student appropriate instruction in reading through the placement and services offered through the IEP process.

4. OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) Parties have the right to present a due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of a child with a disability, or with regard to the provision of FAPE for the child. (20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. § 300.507(a)(2006); Ed. Code, § 56501, subd. (a)(1)-(4).) In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 U.S. Dist. Lexis 26541, the United States District Court for the Northern District of California held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a FAPE. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure

5. Under the IDEA and companion state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400; Ed. Code, § 56000.) FAPE means special education and related services, under public supervision and direction that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

6. California law 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.) The term “related services” includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).) In California, “related services” are referred to as DIS services. (Ed. Code, § 56363, subd. (a).) DIS services may include counseling and guidance services; psychological services other than assessment and development of the individualized education program; parent counseling and training; and social worker services. (Ed. Code, § 563563, subds. (b)(9), (b)(10), (b)(11), & (b)(13).)

7. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176 [102 S. Ct. 3034] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the substantive requirements of the IDEA. The Court determined that a student’s IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student’s abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at p. 201.) *Rowley* also made clear that 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.)

8. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not

required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Rowley, supra*, at 200, 202-204.)

9. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.)

10. In developing an IEP, the team must consider the following factors: (1) the strengths of the child; (2) the concerns of the parents for enhancing the education of their child; (3) the results of the most recent evaluations of the child; and (4) the academic, developmental and functional needs of the child. (20 U.S.C. § 1414(d)(3); 34 C.F.R. § 300.324(a)(2006); Ed. Code, § 56341.1, subd. (a).)

11. 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.) "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.*)

12. By definition, provision of a FAPE requires delivery of special education and related services “in conformity with” a student’s IEP. (20 U.S.C. § 1401(9)(D).) Any material failure to deliver services required by an IEP is a substantive violation of the IDEA. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822.) A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP. (*Ibid.*) The student need not show demonstrable educational harm in order to prevail. (*Ibid.*)

13. As to Issue One, Student failed to meet her burden of proof that Student was denied a FAPE during the statutory time period due to District’s alleged breach of its contractual obligations to provide 80 hours of intensive educational instruction, as set forth in the interim settlement agreement of December 17, 2008, and in the final settlement agreement of March 17, 2009.⁶ Mother relies solely on her recollection to support her claim that Student only accessed 20 hours of instruction. As clearly demonstrated by her conflicting testimony, Mother’s recollection, without more, is unreliable and not credible. District’s obligation to provide the services terminated on

⁶ Student’s due process hearing request focused exclusively on reading instruction, but the settlement agreements at issue, including the interim settlement agreement of December 17, 2008, and the final settlement agreement of March 17, 2009, provided for intensive educational instruction in reading, writing, and math. Student’s due process hearing request does not include an allegation that District denied Student a FAPE by failing to provide intensive math instruction. The Factual Findings concerning Student’s math instruction, including the results of the 2011 STAR report, addressed Student’s Issues Four and Five, *infra*.

December 31, 2009. On December 3, 2009, Mother entered into a settlement agreement with District in a separate matter where she waived all educational claims against District through that date. Accordingly, any claim regarding the unused services is limited to the period between the December 3, 2009, release of all prior claims, and December 31, 2009, the date the services expired under the terms of the March 17, 2009, settlement agreement. Mother's election to terminate the services prior to that time because she did not like the instructor, without notice to District, did not extend District's obligation to her beyond December 31, 2009. OAH does not have jurisdiction to hear mere breach of contract claims. Mother failed to provide evidence that Student was denied a FAPE during the short period of time at issue. (Legal Conclusions 1-11; Factual Findings 1-16.)

14. As to Issue Two, Student failed to meet her burden of proof that Student was denied a FAPE during the statutory period due to District's failure to provide intensive reading instruction. Mother's claim mainly centered on Student's access to Beyond the Bell services, services provided District-wide to all pupils. From the pretests administered to Student during 2010, it was clear that Beyond the Bell provided tutoring for grade level reading instruction. Before the October 14, 2011, IEP team meeting, Beyond the Bell was not referenced in Student's IEP's. Mother was provided interpretation services at all IEPs and consented to the implementation of the IEPs without Beyond the Bell services. Mother applied for Beyond the Bell services in 2010. Between January and March 2010, Student received 18 hours of Beyond the Bell tutoring. District first became aware that Student was accessing these services from her meeting with District administrators in April 2010, not during an IEP team meeting. Although Mother complained that Student could not keep up with the services and requested a special education teacher, she provided no evidence that these services were part of the IEP process. Later that same year, Student was offered 20 additional hours of Beyond the Bell tutoring from the District service provider, but apparently

elected not to access the additional hours offered. Overall, Student had access to a total of 38 hours of District-wide tutoring services during 2010.

15. Student failed to meet her burden of proof that District denied Student a FAPE by not providing Beyond the Bell and school-based tutoring services after the October 14, 2011, IEP team meeting. Beyond the Bell and school-based tutoring was not offered as a DIS in the October 14, 2011, IEP. As set forth in the October 14, 2011, IEP, District's obligation to provide Student access to Beyond the Bell was equivalent to its obligation to provide her access to other extracurricular activities available to Fremont pupils during the 2011-2012 school year, like field trips. To the extent Mother's contention in this hearing is addressed to an alleged failure by the District to implement the Beyond the Bell services as referenced in the October 14, 2011, IEP, Mother failed to provide any evidence that she sought and was denied access to these District-wide services after that time. Notably, Mother failed to provide a letter similar to the invitation she received in August 2010, and referenced in Factual Finding 52. Given the overall inconsistencies in Mother's testimony, and the lack of any corroboration, Mother's testimony on this issue was not persuasive. As set forth in paragraph 17, below, even if Beyond the Bell, or school-based tutoring, was offered as a DIS in the October 14, 2011, IEP, which it was not, Student could not meet her burden of proof that the failure to offer access to Beyond the Bell denied her a FAPE.

16. Student's claim that intensive reading instruction is required to address her dyslexia is unpersuasive. Student's assertion that she had dyslexia was a suggestion by a Beyond the Bell teacher in 2010, with unknown credentials, as set forth in Factual Findings 22-23, but was not otherwise verified. Student's writing sample of April 2011, set forth in Factual Finding 88, displayed one word that had reversed letters of b and d, but otherwise Mother's claim was not supported by competent evidence.

17. As to Issue Two, Student's claim that she was deprived of a FAPE without specialized intensive reading instruction, is contradicted by the overwhelming documentary evidence of Student's unique needs as set forth in the numerous IEPs, and the SCLARC reports and assessments. Student's challenges in reading due to her SLD were, and continue to be, profound. Her progress has been slow, and her challenges many, but the evidence shows that her placement in a SDC was appropriate to her needs. Even assuming Mother was correct about dyslexia, which was not supported by the evidence, there was no evidence presented from which it could be concluded that Student's goals, placement or services would have been different, especially given her profound SLD. The evidence showed that after the time of the letter from the Beyond the Bell teacher, District developed several IEPs with Mother's consent, which addressed Student's unique needs in English language arts, including reading comprehension. District's identification of Student's needs as a pupil with a profound SLD, were confirmed by two SCLARC psychologists. The evidence showed that the IEPs developed for Student provided for a wide range of accommodations to address Student's processing challenges. Although Student did not state a claim that her placement in the general education elective, cosmetology, was inappropriate, and the appropriateness of her placement in this elective was not at issue in this matter, Student's struggles in a large general education elective, like cosmetology, as set forth in Factual Findings 112 and 128, underscores the appropriateness of Student's SDC placement with accommodations.

18. In Sum, Student failed to prove by a preponderance of the evidence that she was denied a FAPE due to District's failure to provide intensive reading instruction. (Legal Conclusions 1, 3, 5-11, 14-17; Factual Findings 1-17, 19, 22-27, 30-32, 35-36, 43, 44-52, 55-58, 61, 63-64, 77-78, 94-100, 108, 114, 115, 117-118, 120, 122, 124, 124, 128, 132-133.)

Issue Three: Denial of FAPE due to failure to provide psychological therapy.

19. Mother contends in Issue Three that Student required, but was deprived of, psychological therapy as a result of purported sexual harassment in 2010. As a result of the purported sexual harassment, Mother also contends that Student acquired a seizure disorder which intensified Student's need for psychological services. Mother also contends that school-based counseling was not provided as offered, and even so, Student required more than school-based counseling to address her emotional needs and to receive a FAPE. District disagrees, and notwithstanding its denial of sexual harassment, maintains that Student was offered and provided with appropriate school-based counseling.

20. Legal Conclusions 1, and 4-12 above, are incorporated by reference.

21. Mother has not met her burden of proof on Issue Three. By Mother's own admission, District was under no duty to provide any psychological counseling services until Student's purported sexual harassment which the evidence shows occurred in 2010. The evidence shows as early as February 17, 2009, as a result of Student's psychoeducational assessment, District was cognizant that Student had social-emotional needs that affected her participation in the classroom, which were unrelated to Mother's claims of sexual harassment. At the March 16, 2009, IEP meeting, the team developed a BSP to address Student's withdrawal from classroom discussions and activities. Mother's claims arising from this IEP during the statutory period, if any, were extinguished by the December 3, 2009, settlement agreement. (Factual Findings 1-15.)

22. Between December 3, 2009, , and the March 19, 2010 IEP, and the alleged incident, there was no evidence that District was on notice that aside from the BSP, psychological counseling services were required for Student to access her education as a result of sexual harassment. According the evidence, the purported incident occurred after the March 19, 2010, IEP team meeting. District was still on notice that Student had

social-emotional needs from the February 17, 2009, psychoeducational report, but not because of sexual harassment. Student was in a new environment, having started a new middle school, Bethune, in February 2010, At Student's first IEP meeting at Bethune, on March 19, 2010, Student was reported to have friends, and as reported in the IEP teachers were not yet familiar with Student. Notably there is no evidence that Mother brought Student's purported sexual harassment to the attention of the IEP team. The IEP team did not continue the BSP but there was no evidence that Student's behaviors required a BSP at that time. District did refer Mother to the Regional Center for services, but Regional Center services addressed Student's needs at home and in the community, not school, and there was no evidence that IEP team members were aware of any unmet social-emotional needs that interfered with Student's participation in the classroom. (Factual Findings 6, 20, 24-37.)

23. Mother has not met her burden of proof that District was required to provide DIS services between March 19, 2010, and the December 10, 2010, IEP team meetings as a result of sexual harassment. After the IEP meeting Mother accused Student's teacher of sexual harassment, and met with administrators to discuss her claim on April 14, 2010, but otherwise there was no evidence that Student's school performance was impeded by the absence of psychological services due to sexual harassment. Between March 19, 2010, and the next IEP on December 10, 2010, Student and Mother were heavily engaged with Regional Center assessments. The Regional Center, utilizing, standardized assessments, and mental health categories of the DSM-IV, diagnosed Student with a mood disorder (NOS). Significantly, Mother did not share the Regional Center intake and assessment reports, or her neurologist's report, with District prior to the December 10, 2010, IEP team meeting. At the December 10, 2010, IEP team meeting, Mother did not mention Student's diagnosis of depression. (Factual Findings 38, 43-64.)

24. The evidence showed that as of the February 23, 2011, IEP team meeting, and as a result of Mr. Watanabe's February 17, 2011, psychoeducational assessment, District offered school-based DIS counseling, but not because of any alleged sexual harassment. As memorialized in Mr. Watanabe's report, Student's social-emotional status, as recorded in Student's self-report, and the reports of her teacher, was fairly consistent with past observations of her, including her inconsistent work habits, lack of focus, and shyness. Significantly, Mother did not mention Student's sexual harassment although she did refer to her migraines and seizure disorder. Mr. Watanabe's report was made without the benefit of Regional Center or Children's Hospital records. The IEP team followed Mr. Watanabe's recommendation of school-based counseling to increase her self-esteem, self-advocacy and goal setting abilities. The IEP team offered 30 minutes a week of school-based counseling. Despite Mother's unsuccessful attempt at hearing to deny that she was present at the February 23, 2011, IEP team meeting, the evidence conclusively established that Mother was present and that she consented to the IEP, including District's offer of 30 minutes a week of school-based counseling. (Factual Findings 65-76.)

25. Mother failed to meet her burden of proof that District deprived Student of a FAPE at the October 14, 2011, IEP team meeting by failing to offer more than 30 minutes weekly of school based counseling. Mother agreed to the services, but requested more intensive psychotherapy services due to Student's sexual harassment and attendant seizure disorder. The evidence showed that nothing transpired between the February 23, 2011, and the October 14, 2011, IEP to require a change in District's offer based upon Mother's claims of sexual harassment. On the contrary, Mother's claims of sexual harassment had been resolved and remained unconfirmed. Mother continued to press for Regional Center services and the reports generated, which she did not share with District, supported District's recommendation of school-based

services to access her education. Specifically, as opposed to sexual harassment, Student's depression, as reported by Mother to the SCLARC psychologist in April 2011, was related to her embarrassment about her special education placement, her poor concentration, and difficulties with memory and processing verbal information. As demonstrated by Student's April 2011 letter, written at the request of the SCLARC assessor, Student's depression was not limited to the school environment; she was emotionally challenged by the home environment. As Mr. Garcia explained, school based counseling focuses on activities at school, including self-esteem issues pertaining to school. Based upon Mother's report to him of sexual harassment, he advised her to seek home-based counseling for intensive services to address trauma that affected Student's functioning at home and in the community. District was not required to offer psychotherapy services to assist Student in navigating her family and community life. Nor was District required to fund psychotherapy due to Student's purported seizure disorder. Dr. Mendoza, denied that Student suffered a seizure disorder. As evidenced by Mother's contradictory statements about the genesis of Student's seizures, Mother's observations were not credible.

The evidence showed that school-based counseling was appropriate given Mr. Watanabe's uncontradicted assessment of Student's challenges as a special education pupil. (Factual Findings 65-76, 83-125, 132-133.)

26. Finally, Student failed to meet her burden of proof that she was denied a FAPE because District failed to provide the psychological counseling offered in the February or October 2011 IEPs. Contrary to Mother's testimony, the evidence shows that the District fully implemented school-based counseling services beginning in February 2011. District was obligated to provide counseling services when Student was in school. There was no testimony about whether Student missed services during the 2010-2011 school year due to absences or otherwise. District was unable to provide Student all the

offered counseling services during the first semester of 2011-2012 due to Student's full or partial absences. As set forth in Legal Conclusion 12, even if District did not provide all counseling sessions as offered, which there is no evidence it did not, a failure to implement an IEP deprives Student of a FAPE only if the failure is material, or more than minimal. Student failed to provide any evidence that District was responsible for missed sessions, or that any missed sessions amounted to a material failure of District to implement the IEP. (Factual Findings 79, 129, 133.)

27. In sum, Student failed to meet her burden of proof on Issue Three. (Legal Conclusions 19-28; Factual Findings referenced therein.)

Issue Four: Denial of FAPE by hiding documents that could assist with Student's social and intellectual development.

Issue Five: Denial of FAPE by giving Student erroneous test scores and grades

28. As to Issue Four, Student claims that Mother was not provided with documents that would assist her in understanding Student's academic status, including homework and grade reports. District disagrees, and maintains that Mother, like all parents, received periodic report cards, and had available for review Student's homework notebook.

29. As to Issue Five, Student claims that Student's school grades, as evidenced by her performance on the statewide STAR testing, were inflated and did not reflect Student's failure to perform at grade level. Student also claims that a teacher falsified Student's classroom mathematics test in 2009. Student claims that as a result of deceptive grading practices, and the falsified math test score, she did not learn of Student's true progress and Student did not receive necessary services to support her math progress. District disagrees, and maintains that Mother's uncorroborated

testimony is unreliable, and that her claim about testing in 2009 is waived by her December 3, 2009, settlement agreement.

30. Legal Conclusions 1, and 4-12, above, are incorporated by reference.

31. The IEP must describe when periodic reports of a pupil's progress on goals will be provided, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards. (20 U.S.C. § 1414(d)(1)(A)(III); Ed. Code, § 56345 (a) (3).)

32. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the IEP process when he or she has an opportunity to discuss a proposed IEP and when parental concerns are considered by the IEP team. (*Fuhrmann v. East Hanover Bd. Of Educ.*, *supra*, 993 F.2d at p. 1036.)

33. A procedural violation constitutes a denial of FAPE if it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.) If a procedural violation is found to have significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892-895 [school's failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents right to participate in the IEP process, resulting in compensatory education award];

Target Range, supra, 960 F.2d at pp.1485-1487 [when parent participation was limited by district's pre-formulated placement decision, parents were awarded reimbursement for private school tuition during time when no procedurally proper IEP was held].)

34. As to Issue Four, Student's claim that she was not assigned homework, or provided with grade reports, resulting in a deprivation of information about her progress, was contradicted by the credible testimony of Student's teachers, and Mother's admissions. During the 2009-2010 school year, as set forth in Factual Finding 40, Mother acknowledged that Student received homework, and completed it as soon as she came home, during her April 2010 intake interview with SCLARC. During the 2010-2011 school year, as set forth in Factual Finding 51, Ms. Bachinela required Student to maintain a homework notebook. As set forth in Factual Finding 110, Ms. La Franchi also assigned homework. Student's claim that Mother did not receive grade reports was also contradicted by the evidence. As set forth in Factual Findings 17, 49, 105, and 131, the evidence showed that Student, like all other pupils, received periodic grade reports.

35. Student has not met her burden of proof that District's failure to provide written progress reports, as set forth in Legal Conclusion 31, resulted in a denial of FAPE. The March 2010 IEP did not specify how Student's progress on her goals would be reported to Mother, Factual Finding 33. The December 2010 and October 2011 annual IEPs, as set forth in Factual Findings 62 and 123, provided that Mother would receive progress reports at the time of the benchmark dates, or with Student's report cards. Although it was established that District distributed report cards, there was no evidence of whether the report cards contained progress reports about Student's IEP goals. Nevertheless, to prevail on Issue Four, as set forth in Legal Conclusions 32 and 33, Student needed to show that District's failure to meet its obligation to provide periodic progress reports resulted deprived Parent of participation in the IEP process, or

otherwise denied Student a FAPE. Student failed to provide a scintilla of evidence that District's failure to meet its IEP obligation to provide written progress reports on Student's goals impeded Mother's right to participate in Student's IEPs or the IEP decision-making process. On the contrary, there was overwhelming evidence that Mother was a well-informed and active participant in the IEP process. During each IEP, the team reviewed with Mother, Student's unique needs, progress on her goals, and proposed goals. Mother always had the assistance of a Spanish-language interpreter, and consented to the IEPs. Outside of the IEP team meetings, Mother communicated with Student's teachers and administrators, as set forth in Factual Findings 43 and 51. During the 2010-2011 school year, Ms. Bachinela provided reports to parents in a variety of ways, including periodic updates via voice mail. Likewise, Student failed to provide any evidence that District's failure to provide written progress reports deprived her of educational benefits. Mother consented to the IEPs and Student's claims only question the appropriateness of DIS psychological counseling and reading instruction. Student has failed to meet her burden of proof that any goals or services, including, those addressing Student's unique math deficits, were affected by District's failure to provide written progress of Student's IEP goals, outside the IEP team meetings.

36. For these reasons, Student did not meet her burden of proof that Mother was deprived of documents which undermined Mother's right as a parent to participate in the IEP process and secure Student a FAPE. (Legal Conclusions 28, 30-35, and Factual Findings 1-17, 24-36, 50, 55-64, 68-80, 94-100, 107-111, 114-133.)

37. As to Issue Five, Student did not meet her burden of proof that District promoted erroneous and deceptive grading practices that underestimated Student's academic deficiencies and denied Mother her right to participate in the IEP process, or otherwise deprived Student of a FAPE. At hearing, Mother focused on the disparity between Student's math grades and her 2011 STAR report. As set forth in Factual

Findings 17 and 49, Student achieved passing grades in all her subjects, including math, in fall 2009, and spring 2010. In contrast, as set forth in Factual Finding 28, the 2011 STAR report established that when compared to her eighth grade peers, Student's math skills were equivalent to that of a pupil in the fifth month of second grade. Student's current ninth grade math teacher Ms. La Franchi confirmed Student's math deficiencies and understood them to be long-term, as set forth in Factual Findings 125-126.

38. Despite the disparity between Student grades as an SDC pupil, and her performance when contrasted with general education peers, Student did not prove by a preponderance of the evidence that District's grading practices were deceptive and denied Student a FAPE. As set forth in Legal Conclusions 4, 32 and 33, for District's grading practices to be a proper subject for an IDEA claim, these practices must have either deprived Mother of her right to participate in the IEP process, or deprived Student of an educational opportunity, or both. When measured against general education pupils taking the STAR test, Student's grade report appears inaccurate. However, as the record shows, Student was in SDC's for all her academic subjects, throughout the statutory period. While it is true that Student could not perform at a general education grade level when compared to her grade level peers, as measured by her STAR report, and her unsuccessful participation in a general education elective, cosmetology, as set forth in Factual Findings 112 and 128, there was insufficient evidence of Student's performance vis-à-vis her peers in the SDC class. Further, there was no evidence that District instituted deceptive grading practices for its SDC pupils in math, or any evidence as to how grades for SDC pupils were determined. Finally, as in Issue Four, paragraph 37, there was simply no evidence that District's grading practices deprived Mother of her right to participate in the IEP process, or Student of an educational benefit.

39. Student's Issue Five claim that a District math teacher falsified her math test sometime in 2009 was supported only by Mother's testimony, as set forth in Factual

Finding 18. Mother was uncertain of the IEP, but assuming the IEP was held in 2009, Student's claim is either barred by the statute of limitations, or waived by the December 3, 2009, settlement agreement, as there was no evidence that an IEP occurred in 2009 after the date of the settlement agreement.

40. In sum, as to Issue Five, Student did not meet her burden of proof that Mother was deprived her right to participate in IEP decision-making, or Student was deprived of an educational benefit due to deceptive grading practices, or a teacher's purported falsification of Student's math test. (Legal Conclusions 29-30, 32-33, and 37-39, and Factual Findings referenced therein.)

Issue 6: Denial of FAPE by incompetent teachers and insufficient instructional time

41. Student claims that Student was denied a FAPE because the special education instructors are incompetent and District has shortened the school day so that there is insufficient instructional time for Student. District disagrees, and maintains that Student has failed to state a claim within OAH's jurisdiction, and Student's claims are without foundation.

42. Legal Conclusions 1, 4-12, 32-33, above, are incorporated by reference.

43. The lack of a teaching credential, or any other technical qualification, in and of itself, does not constitute a denial of FAPE. There is no private right of action on a claim that special education teachers are not "highly qualified." (34 C.F.R. § 300.18(f)). The central issue with respect to teacher qualifications is whether the staff was capable of implementing the IEPs. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786,801-802.)

44. Student's claim that Student's teachers were incompetent is not supported by the record. As set forth in Factual Findings 45 and 109, Ms. Bachinela and Ms. La Franchi have the required certifications or emergency credentials to teach special

education pupils with SLD. There was no evidence that they were not qualified to, or did not properly implement, the operative IEP's at any time.

45. Student's uncorroborated claim that the length of District's school day, as set for the in Factual Findings 21 and 107, deprived Student of a FAPE is not supported by the evidence. Student did not show any causal connection between District's once-a-week shortened day and Student's academic progress, or progress on her goals and objectives. As set forth in Legal Conclusion 4, without a connection to Student's right to a FAPE, Student's claim about district-wide policies, fails to establish that she individually was deprived of a FAPE.

46. In sum, as to Issue Five, Student failed to meet her burden of proving she was deprived of a FAPE. (Legal Conclusions 41-45, and the Factual Findings referenced therein.)

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code § 56505, subd. (k).)

DATED: May 16, 2012

/s/

EILEEN M. COHN

Administrative Law Judge

Office of Administrative Hearings