

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VISTA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2013070169

DECISION

The Vista Unified School District (District) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), State of California, on July 1, 2013, naming Parents on behalf of Student (collectively referred to here as Student). OAH continued the matter for good cause on July 17, 2013.

Administrative Law Judge (ALJ) Darrell Lepkowsky heard this matter in Vista, California on November 4, 5, 6, 7, 8, 12, and 13, 2013.

Jonathan Read, Attorney at Law, represented the District. Steven Davis, the District's Supervisor of Special Education, attended the hearing every day on behalf of the District. Dr. Matthew Doyle, the District's Director of Special Education, attended the first day of the hearing as a District representative.

Student was represented at the hearing by his mother and father who were both present for the entire hearing. Student did not attend the hearing.

The hearing was interpreted from English to Spanish and Spanish to English for Mother and occasionally for Father. The interpreter also orally translated parts of documents from Spanish to English and English to Spanish when necessary. Some of the documents moved into evidence by Student were originally written in Spanish. The

District did not object to admitting the documents based upon the fact that they were in Spanish.

The ALJ granted a continuance for the parties to file written closing arguments and the record remained open until December 4, 2013. Upon timely receipt of the written closing arguments, the ALJ closed the record and the matter was submitted for decision.

ISSUE¹

Did the District's individualized education program (IEP) developed on March 6, March 13, March 18, April 10, May 13, and May 28, 2013, offer Student a free appropriate public education (FAPE) in the least restrictive environment (LRE)?

SUMMARY OF DECISION

In this case, the District seeks to implement its IEP offer developed through a series of six IEP team meetings in March, April, and May, 2013. The District contends that the IEP offer meets Student's unique needs in the LRE. The District contends that it developed appropriate goals for Student and has offered him a combination of placement, services, and accommodations that will permit him to make meaningful academic progress. The District contends that it can meet Student's needs through placement in general education classes with specialized academic instruction in the area of study skills. Finally, the District contends that if it committed any procedural violations during the IEP process, those violations were minimal and did not impede Student's

¹ The issue has been slightly rephrased for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

right to a FAPE, significantly impede the opportunity of Student's parents to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefits to Student.

Student contends that the District committed procedural violations during the IEP process that are significant enough to have impeded the ability of his parents to participate in the IEP process. Student contends that he is making inadequate academic progress in the general education environment. He therefore contends that the District's IEP offer is substantively deficient because the proposed goals are inadequate, the placement and services do not address Student's needs, the offer fails to address Student's needs as an English language learner, and the offer fails to provide for extended school year (ESY) services.

This Decision finds that even though the District committed procedural violations, those violations failed to impede Student's right to a FAPE or deprive him of educational benefit and failed to significantly impede the right of Student's parents to participate in the process of developing Student's IEP. This Decision also finds that, although the District should have developed a self-advocacy goal for Student, the District's proposed IEP sufficiently met the standard of offering Student a special education program that was reasonably calculated to provide educational benefit in the LRE. Therefore, this Decision finds that the District may implement its IEP offer over the objections of Student's parents.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND INFORMATION

1. At the time of this hearing, Student was 12-years-old. He has attended school within the District since kindergarten. The District is responsible for providing Student with an education. Student was first qualified for special education when he was

in fourth grade, based upon eligibility under the category of Other Health Impairment due to Student's diagnosis of Attention Deficit Disorder. Student's attention deficit affected his ability to access his education due to his lack of focus, lack of organizational skills, and inability to complete assignments. Student's last agreed upon IEP was developed when he was in fifth grade, his last year of elementary school. Student has attended the District's Roosevelt Middle School since the 2012-2013 school year, when he began sixth grade.

2. Student lives with both of his parents. He is the middle of five children. Student's mother is an immigrant to the United States. She was educated as a teacher in her country of origin but has never practiced her profession. Mother's primary language is Spanish, which she speaks, understands, reads, and writes fluently. She cannot speak or understand much spoken English. Although Mother can read English, she cannot write it. Student's father is fully bilingual in written and spoken English and Spanish.

3. Spanish is the language primarily spoken in Student's home. Student was therefore designated as an English language learner as soon as he started kindergarten and retains that designation to date. However, by the time of the IEP at issue in this case, Student had become fully bilingual in English and Spanish, and was fully able to access his education in English.

4. Student is well-behaved at school. He is friendly, polite, and all of his teachers find him a pleasure to be around. However, Student is shy and finds it difficult to take the initiative in asking questions in class or discussing his academic or personal problems with his teachers.

5. Student's Attention Deficit Disorder causes him to lack focus, have a poor short-term memory, have poor organizational skills, and to be inconsistent in completing assignments, particularly homework. Student takes prescribed medication for his attention issues. Based on these deficits, when Student was in fourth grade the

District found that he qualified for special education under the category of Other Health Impairment. Student's latest agreed upon and implemented IEP contained a study skills goal, a writing goal, and a mathematics goal. All three goals addressed Student's deficits caused by his difficulties with memory, attention, and organization.

6. The District's March 2013 multidisciplinary assessment of Student indicated that there is a substantial discrepancy between Student's ability and achievement in written expression. Although Student's reading comprehension was in the average range, there was a discrepancy in his ability and achievement in that area as well. These discrepancies are due to a disorder in the areas of attention, auditory short-term memory, and expression due to processing speed delays in retrieval fluency. The District's May 28, 2013 IEP therefore proposes that Student be found eligible for special education under the primary classification of Specific Learning Disability, with Other Health Impairment designated as a secondary area of eligibility.

ASSESSMENTS COMPLETED DURING THE 2012-2013 SCHOOL YEAR

Psychological Evaluation Administered by E. Grace Priest

7. In August 2012, a therapist at Rady Children's Hospital referred Student to the California School of Professional Psychology for an independent assessment. The purpose of the assessment was to determine what was interfering with Student's ability to concentrate and to sustain attention and to determine if Student's deficits were caused by a learning disability or other disorder. At the time of this assessment, Student had just started sixth grade.

8. The assessment was administered by E. Grace Priest, a practicum student at the California School of Professional Psychology who has a Master of Arts degree. Ms. Priest administered her assessment over three days in August and September 2012. Parents were not able to locate Ms. Priest in order to present her testimony at hearing.

There is thus no explanation of her test procedures or test results other than that in her assessment report.

9. Ms. Priest's testing procedures included administration of two cognitive testing instruments (the Wechsler Intelligence Scale for Children – Fourth Edition and the Developmental Neuropsychological Assessment) and administration of an academic achievement test (selected subsets of the Wechsler Individual Achievement Test – Third Edition).

10. On the Wechsler Intelligence Test, Student's scores in verbal comprehension, working memory, and processing speed, were all in the average range. Ms. Priest found Student's scores in these areas to be within normal limits. Student's scores in perceptual reasoning were in the high average range. Ms. Priest described these scores as being above average and a personal strength for Student.

11. Student's scores on the Developmental Neuropsychological Assessment indicated that Student had difficulty with attention and completing tasks, although his overall scores in attention and executive functioning were average. Student obtained average results in the areas of social perception, visuospatial processing, and memory and learning, although, again, Student's lowest scores were in subtests addressing delayed memory tasks. On this assessment, Student's overall lowest scores were in phonological processing.

12. On the Wechsler Achievement Test, Student's scores in word reading, oral expression, and spelling were all in the average range. However, Student's standard score in reading comprehension was only 45, which is below the first percentile for other children his age. Ms. Priest's report does not address the fact that this score was significantly lower than Student's reading comprehension scores on previous assessments, or the fact that the score was markedly lower than his other scores on the same test. Nor does Ms. Priest discuss the fact that this score was incredibly low for a

child who had average to high average intelligence and had been progressing from grade to grade. Because Ms. Priest did not testify at hearing, none of these issues could be clarified with her.

13. Student's reading comprehension score obtained by Ms. Priest was markedly lower than those obtained by the District in its triennial multidisciplinary assessment of Student, completed in January and February 2013. This assessment is discussed below. The score was also markedly lower than the reading comprehension score Student obtained on an independent assessment done by Lindamood-Bell, which is a non-public agency that provides reading and mathematics interventions to children. The Lindamood-Bell assessment will also be discussed below.

14. Steven Davis, the District's Supervisor of Special Education, has 25 years of experience in education. He has a Master of Science degree in Educational Technology and has provisional California certifications in special education and in teaching single and multiple subjects. Mr. Davis also has a resource specialist certificate. Before becoming an administrator, he was a special education teacher for 15 years. Mr. Davis was also a branch manager for the Lindamood-Bell company for six years and is very familiar with the testing used and developed by that company.

15. Mr. Davis indicated that the score of 45 in reading comprehension that Student obtained on Ms. Priest's administration of the Wechsler Achievement Test is extremely low. A score of 45 is even lower than that expected from children with severe cognitive delays. Mr. Davis opined that Student's reading comprehension score on Ms. Priest's assessment could only be explained as an anomaly, based upon Student's scores on all other reading assessments he has taken over the years as well as his performance in his classes.

16. District school psychologist Nicholas Garcia has a Master's degree in school psychology along with a Pupil Personnel Services Credential in school

psychology. He has been a school psychologist for three years. Prior to that, he was a substitute teacher and an English Language Development instructor. Mr. Garcia agreed with Mr. Davis that a reading comprehension score of 45 would indicate severe intellectual delays in a child. He agreed that Student does not present deficits in cognition and that the score of 45 was not a true indicator of Student's reading comprehension abilities.

17. Student was represented by Andrea Plotkin, Ed.D.² at two of his IEP team meetings. Dr. Plotkin agreed with District IEP team representatives that Student's score of 45 in reading comprehension obtained by Ms. Priest was not indicative of Student's actual reading comprehension abilities.

18. Based upon Student's consistent average and above average reading comprehension scores on other assessments conducted during the 2012-2013 school year, Student's past achievement scores, and Student's ability to comprehend material in his classes, as well as the fact that Student is of average to high average intelligence, Ms. Priest's conclusion that Student's reading comprehension was below the first percentile, is not persuasive. The opinions of Mr. Davis and Mr. Garcia that Student's low reading comprehension score on Ms. Priest's assessment is not indicative of his true reading comprehension abilities is therefore more persuasive than Ms. Priest's findings that Student has significant reading comprehension deficits.

19. As a result of her assessment, Ms. Priest found that Student was of average intelligence but that he learned better through visual means than through verbally presented material. Student had difficulty with spelling. Ms. Priest's assessment corroborated prior testing of Student's with regard to his deficits in attention and memory. Ms. Priest concluded that Student's low scores on memory tasks and his slow

² Parents were not able to arrange for Dr. Plotkin to testify at the hearing.

completion time on tasks was consistent with his diagnosis of Attention Deficit Disorder. These deficits contributed to Student's difficulty in absorbing information, particularly through reading or listening to the information. Ms. Priest's findings in these areas are commensurate with the District's testing of Student and, for the most part, his scores on the Lindamood-Bell tests.

20. Ms. Priest recommended that Student be taught using images, pictures, or other visual media such as diagrams. She also recommended that he be taught thinking strategies and skills. With regard to specific classroom accommodations, Ms. Priest recommended that Student be given extra time on assignments and tests; that visual instructional materials be used in his classrooms; that Student be taught how to proofread and edit his written assignments; that his assignments be structured to his reading level; and that his teachers grade his assignments based on content rather than on handwriting, spelling, or organization.

21. Parents provided the District with a copy of Ms. Priest's assessment report. The District reviewed the assessment in the fall of 2012 and discussed it during the IEP meetings at issue in this case. The majority of Ms. Priest's recommendations paralleled those of the District's IEP team members. Her recommendations were eventually incorporated in large part into the District's proposed IEP, either through goals developed for Student or in proposed accommodations.

Lindamood-Bell Assessment

22. Parents were concerned about Student's reading abilities after receiving Ms. Priest's assessment report. On December 3, 2012, they took Student to a branch of the Lindamood-Bell agency to have Student assessed. Lindamood-Bell administered several standardized tests to Student: the Peabody Picture Vocabulary Test; three subtests of the Detroit Tests of Learning Aptitude; a subtest of the Woodcock Reading Mastery Test; the Slosson Oral Reading Test; the spelling and math computation

subtests of the Wide Range Achievement Test; and the paragraph reading portion of the Gray Oral Reading Test. Lindamood-Bell also administered tests it has developed itself in the areas of auditory conceptualization, informal writing, and symbol imagery.

23. The Lindamood-Bell testing summary does not include the name or position of the person or persons who administered the test. The summary does not give a description of the circumstances under which Student was tested, does not describe the tests or explain the test scoring, and does not discuss the test results. Additionally, there is inconsistent use of scoring descriptors on these tests. For example, on the verbal absurdities portion of the Detroit tests, the only score given was for Student's "mental age" (13-0.) However, on the word opposites portion of the same test, there is scoring based on a standard score, a percentile score, and a mental age score.

24. Student scored in the average range on each test or subtest of the standardized tests for which a percentile score is indicated, with two exceptions. He scored in the ninth percentile, which is below average, on the accuracy portion of the Gray Oral Reading Test, and in the 75th percentile on the reading comprehension portion of that same test. This placed Student's reading comprehension at an eighth grade level. At the time of the test, Student had completed about three months of sixth grade.

25. Student scored in the eighth percentile, which is below average, on the Lindamood-Bell Auditory Conceptualization Test. This test measures phonemic awareness. However, Mr. Davis explained that Student's low score on this test was most likely due to the long length of the test instructions. The instructions can take 15 minutes to present. Given Student's memory deficits, Mr. Davis hypothesized that Student simply could not recall all the instructions relating to this test and therefore was not able to do well on it.

26. Student did not present testimony of any Lindamood-Bell staff. Therefore, none of the issues or inconsistencies concerning the Lindamood-Bell testing was clarified at the hearing. Student did not present any testimony that contradicted Mr. Davis's belief that Student's low score on the Lindamood-Bell auditory test was due to Student's inability to remember long instructions. Mr. Davis's belief conforms to Student's low scores on the memory portions of all assessments administered to Student during the 2012-2013 school year.

The District's Triennial Psycho-Educational Assessment

27. Based upon the concerns Student's parents had about his educational progress, Student's IEP team decided to administer an early triennial assessment to him. Mr. Garcia headed the team that administered the psycho-educational assessment. Mr. Garcia was assisted by resource specialist teacher Evelyn O'Toole, who was Student's study skills teacher his first semester of sixth grade, and by Dr. Alison Garner, a District school psychologist.

28. As part of his assessment, Mr. Garcia reviewed Student's prior assessments, including the one done by Ms. Priest. He reviewed Student's school records and observed Student in class and during the testing process. During his classroom observation of Student, Mr. Garcia observed that Student followed directions and interacted occasionally and appropriately with a peer seated next to him. Although he did not ask questions, Student was engaged and focused in the class. He completed his work and transitioned well to each activity. During the testing process, Student understood the test directions and followed them. His focus and concentration were adequate and he did not require breaks.

29. Mr. Garcia administered the Comprehensive Test of Nonverbal Intelligence – Second Edition, which measures different but interrelated nonverbal intellectual abilities. The global nonverbal intelligence quotient derived from a student's test results

is the combination of the student's pictorial nonverbal intelligence quotient and geometric nonverbal intelligence quotient. Student's global score was 111, which was in the high average range. The test indicated that Student has good raw intellectual abilities. The score conformed to prior assessments of Student.

30. Mr. Garcia also measured Student's intellectual capacity using the Woodcock-Johnson Test of Cognitive Abilities – Third Edition. Student scored in the average range in the areas of verbal ability, visual-spatial thinking, and cognitive fluency. He scored in the low average range in working memory and long-term retrieval, as he had on prior testing. Student's strength was in processing speed, where his standard score of 106 placed him well into the average range. Commensurate with other assessments of him, Student scored lowest in the area of short-term memory, where his standard score of 69 placed him in the range of well-below average.

31. To further assess Student's memory ability, Mr. Garcia administered the Wide Range Assessment of Memory and Learning – Second Edition. This test yields four indexes. Student scored in the average range in the areas of general memory and verbal memory. Student's score in visual memory was also in the average range, but was higher than his other scores. Student scored lowest in the attention/concentration index. His standard score of 82 was in the below average range. Student had difficulty recalling information in the correct sequential order. Student's scores on this assessment also corroborated the low scores Student received on other memory-based assessments. Student's attention related difficulties as well as his processing difficulties were the primary reasons he received the low scores on the attention/concentration indexes of this assessment.

32. Mr. Garcia administered a testing instrument called the Comprehensive Test of Phonological Processing in order to measure Student's ability to discriminate the sounds of speech within words, to recall sound patterns, and to access verbal

information efficiently. Student's phonological process scores on this test resulted in a standard score of 100, indicating that Student was right at average range in this area.

33. The Berry Developmental Test of Visual-Motor Integration – Sixth Edition assesses eye-hand coordination for paper-and-pencil tasks in a structured format. While Student's overall standard score on this test was 106, placing him well within the average range, his score on the motor coordination portion of the test was 78, placing him in a range below average. This low score was indicative of Student's writing abilities to the extent that it took him extra time to execute a legible work product.

34. Mr. Garcia had Student complete the Self Report of Personality portion of a ratings scale called the Behavior Assessment System for Children – Second Edition. This test quantifies a child's thoughts, feelings, and perceptions in 16 different areas. Student's self-rating did not place him in the clinically significant range in any area. Student's scores fell in the average (or typical) range in everything except attention problems. Student's score of 60 placed him in the "at-risk" range, which was commensurate with his diagnosis of Attention Deficit Disorder and his history of attention related difficulties. Along with Student's processing deficits in auditory short-term memory, Student's difficulties with attention were impacting his learning and academic performance.

35. Ms. O'Toole was Student's resource specialist teacher for study skills his first semester of sixth grade. She has a Bachelor's degree in Spanish and a Master of Science degree in Special Education. Ms. O'Toole has a multiple subject teaching credential, a learning handicapped credential, a bilingual certificate of competence, and a resource specialist certificate of competence. Ms. O'Toole has specific training in a variety of reading intervention programs, including Lindamood-Bell and Read 180. She has been trained in educational technology, including Digital Switch, a technology program for special education students. Ms. O'Toole has been a teacher for almost 25

years and has assessed hundreds of children. Much of Ms. O'Toole's teaching experience has been as a bilingual teacher and a bilingual resource specialist, although for the last six years she has been a resource specialist teacher for a non-bilingual class. Ms. O'Toole is also trained in a program called Sheltered Instruction Observation Protocol, known by the acronym SIOP. This program is designed to address the academic needs of students learning English, which is one of Ms. O'Toole's specialties.

36. Ms. O'Toole administered the Woodcock-Johnson Achievement Test – Third Edition to Student. This is a standardized academic achievement test that assesses a child's academic levels in a variety of areas. Student's standard score in basic reading skills was 101, right in the middle of the average range. His reading comprehension score on this test was 91, also in the average range. Student's written expression score was 94, in the average range. His math calculation score was 99 and his math reasoning score was 100, both also right in the middle of the average range.

37. Ms. O'Toole also administered the Gray Oral Reading Tests to Student. This assessment addresses reading rate, reading accuracy, reading fluency, and reading comprehension. Student's scores were all at grade level for rate, accuracy, and fluency of reading. However, similar to the scores he obtained when given this same test by Lindamood-Bell, Student's reading comprehension score was in the 75th percentile, placing him at a mid-eighth grade level. For reasons not explained at the hearing, this test was not included in Ms. O'Toole's portion of the District's multidisciplinary triennial assessment report. However, the test results were provided to Parents, were discussed at Student's IEP meeting and Ms. O'Toole discussed them during her testimony at hearing.

38. In order to obtain a more in-depth picture of Student's writing abilities, the District decided to administer an additional writing assessment to him. Parents had asked the District to administer a testing instrument called the Kaufman. However, the assessor that the District selected for the additional testing, Dr. Allison Garner, does not

administer that particular assessment. Instead, Dr. Garner chose to administer the Test of Written Language – 4 to Student, a testing instrument which she has administered many times. The District had Dr. Garner administer this test rather than Mr. Garcia or Ms. O’Toole because Dr. Garner has more experience with it, although Mr. Garcia is knowledgeable about the test and is qualified to interpret its results. Although Student’s parents requested the Kaufman, Student did not present any evidence that the writing test instrument used by Dr. Garner was an improper test to administer to Student or that Dr. Garner did not administer it according to the test publisher’s instructions.

39. The Test of Written Language assesses five components of written language: the mechanical component (the ability to write legibly); the production component (the ability to generate enough sentences to adequately express thoughts); the conventional component (the ability to write in compliance with accepted standards or written style); the linguistic component (the ability to use accepted English); and the cognitive component (the ability to express ideas in a creative and mature way). Within the context of these five components, this test assesses a child’s contrived writing style, his vocabulary, his ability to edit illogical sentences, his ability to integrate sentences into one complete sentence, and his every day functional writing ability.

40. In the contrived writing section, Student was required to spell and write a sentence and combine sentences using proper grammar. He also was required to write a short story in 15 minutes. Student scored in the low average range on this portion of the test. Student scored in the low average range on the spelling portion of the test and in the average range in punctuation skills. Student’s ability to correct illogical sentences was in the low average range for his age. This subtest and the vocabulary subtest indicated that Student had the ability to understand basic correct grammar when he reads it.

41. Student's weaknesses on the writing test were in the areas of sentence combining and spontaneous writing. Student scored below average in both areas. Student became fatigued during these tests. His writing was difficult to read and was immature for his age and grade level.

42. Student's writing on the test was basic, but his story did have an expected sequence, was logical, and was based on the picture he was asked to describe. Dr. Garner recommended that Student would benefit from using a graphic organizer and a word bank in order to organize his writing. She found that Student needed to learn how to improve his writing through structured writing guidelines and completion of drafts. Based upon these test results and Dr. Garner's recommendations, Student's IEP team developed two writing goals for him. Student does not dispute that he needs goals in writing.

43. The results of the District's psycho-educational assessment indicated that Student has average to high-average intelligence, based primarily on his nonverbal reasoning skills. Student also demonstrated average ability on visual processing skills, visual processing speed, associative memory, phonemic awareness, and visual-motor integration. Student's weaknesses are in the areas of auditory short-term memory, processing speed in word retrieval, and motor coordination. Mr. Garcia opined that Student's inattention deficits affected Student's memory abilities. His testimony at hearing emphasized that these deficits combined to hinder Student's ability to retain information he read and to write clearly. Using the scores from the nonverbal intelligence testing and the test of written language administered by Dr. Garner, Mr. Garcia concluded that Student had a significant discrepancy in written expression as well as a possible discrepancy in reading comprehension, both of which qualified him for special education under the category of Specific Learning Disability. Based upon his

attention deficits, Student also continued to qualify for special education under the category of Other Health Impairment.

Speech and Language Assessment

44. Student's parents requested that the District assess Student in the area of speech and language. The District assigned speech and language pathologist Erica Palmatier to conduct this assessment. The assessment was done in February 2013.

45. Ms. Palmatier has a Bachelor's degree in Speech, Language, and Hearing Sciences, and a Master's degree in Speech Language Pathology, which she received in May 2012. She obtained her Certificate of Clinical Competence in Speech-Language Pathology a few months after assessing Student. Because Ms. Palmatier had only recently obtained her Master's degree when she assessed Student, Parents questioned her competence to do the assessment and the validity of her results. However, although Ms. Palmatier is new to her profession, it was apparent from her testimony at hearing that she is knowledgeable in the field, is a professional of the highest quality, and executed her duties as an assessor with precision and fidelity to the tests she used.

46. Ms. Palmatier's assessment consisted of a review of Student's records, the administration of standardized tests, and a language sample.

47. In order to assess Student's receptive and expressive language abilities, Ms. Palmatier administered the Comprehensive Assessment of Spoken Language. She administered this test in English as that is the language in which Student has received instruction since kindergarten. The test contained subtests in the areas of antonyms, grammatical morphemes, and nonliteral language, in which Student scored in the above average range, and sentence comprehension and pragmatic judgment, in which Student scored in the average range. Student's overall core language score was 100, right in the middle of the average developmental range for children his age. Ms. Palmatier did not do any further subtests because Student's average and above average scores did not

warrant it. Student presented no evidence that Ms. Palmatier should have administered more subtests on this assessment.

48. However, because Student was designated as an English language learner and spoke Spanish at home, Ms. Palmatier decided also to assess Student's receptive and expressive speech abilities in Spanish. She administered the Receptive One-Word Picture Vocabulary Test and Expressive One Word Picture Vocabulary Test in Spanish, through the use of an interpreter.

49. The expressive portion of this assessment is administered to determine a child's vocabulary skills. It is norm-referenced, which means that a child's results are compared to those of other children. The test examined Student's ability to name objects, actions, and concepts in both English and Spanish. The test consisted of presenting Student with color illustrations and asking him to name the item or label the action using one word in whatever language he preferred. Student's standard score was 116, which was in the above average range.

50. The receptive portion of this assessment is administered to determine Student's comprehension of vocabulary in both English and Spanish. Student was provided a stimulus word, which he was asked to identify from a series of illustrations presented to him. If Student responded incorrectly in Spanish, he was asked again in English. Student's standard score of 119 placed him in the above average range for his developmental level on this test.

51. Ms. Palmatier also took an oral language sample from Student. Ms. Palmatier held a conversation with Student in which they discussed football, Student's family, and Student's typical day. She recorded the conversation in order to be able to count Student's utterances. Student made 58 complete and intelligible utterances. Ms. Palmatier calculated Student's mean length of utterance by dividing the number of morphemes (which are the smallest meaningful elements of speech) by the number of

utterances. Student's mean length of utterance was 7.6. He demonstrated appropriate use of verb tense, plurals, and conjunctions. Overall, a majority of Student's utterances were syntactically correct and age appropriate.

52. Based upon Ms. Palmatier's assessment, Student did not qualify for speech and language related services because he demonstrated average to above average receptive and expressive speech and language abilities.

53. Parents distrusted the use of the Expressive and Receptive One-Word Vocabulary tests because the tests are based on pictures of things with which a young child would be familiar. However, Student presented no evidence in support of the position that these tests were not appropriate for Student, were not applicable to his age or developmental level, or were not appropriately administered according to the publisher's instructions. Ms. Palmatier is a trained speech and language pathologist who testified confidently at hearing about the tests she administered and why the results were valid. Other than conjecture, Student has provided no reason to doubt the validity of Ms. Palmatier's assessment in this area or the results she obtained. As discussed below, Ms. Palmatier asked her supervisor, Jo Taylor, to attend one of Student's IEP meetings to also explain the tests to Parents. They did not believe Ms. Taylor's explanation any more than they believed Ms. Palmatier.

54. Neither of Student's parents have education, training, or experience in the field of speech and language pathology or assessment. It was apparent during their questioning of Ms. Palmatier during the IEP process,³ as well as during her testimony at hearing, that Parents were confusing Student's difficulties in written expression with a

³ Student submitted as evidence recordings Parents made of the IEP meetings held on March 6, March 13, March 18, May 13, and May 28, 2013. The recordings total approximately 12.5 hours. The undersigned ALJ listened to all of the recordings.

possible speech deficit. Parents simply did not understand that a deficit in written expression such as Student has, does not mean that the Student has a speech deficit. As Ms. Palmatier pointed out, it is possible for someone to speak and understand a language fluently but be unable to read or write it.

55. In any case, Student presented no evidence that the assessment conducted by Ms. Palmatier did not use appropriate assessment instruments, that Ms. Palmatier improperly administered the tests, or that the test results were invalid.

Assistive Technology Assessment

56. The District previously provided Student with an assistive technology tool called a spell-checker and provided him with access to a computer for word processing purposes if needed. Student's parents believed that he required additional technology to assist him in accessing his curriculum. They were particularly concerned because Student sometime writes illegibly because he is a visual learner. Parents requested that the District administer an assistive technology assessment to determine if Student required the additional assistance.

57. The District does not have an assistive technology assessor on staff. The District therefore referred the assessment request to the Special Education Local Plan Area of which the District is a member. The Special Education Local Plan Area assigned the assessment to an assistive technology assessor named Jeff Adams. Mr. Adams performs assessments for some 14 school districts. Mr. Adams has been performing assistive technology assessments for this Special Education Local Plan Area for 13 years; prior to that he was the assistive technology expert for a school district. He completed Student's assessment in March 2013.

58. Mr. Adams chose to assess Student using the Writing Productivity Profile, which measures a child's speed of writing by pencil versus his speed of writing using a computer keyboard. The test also provides a way for the assessor to observe the child's

formation of letters, spacing, speed, and use of lines on the writing paper. Mr. Adams selected this test because it is used nation-wide and provides an accurate view of a child's writing abilities. It is the test he generally uses with children who have difficulties with writing and spelling.

59. Mr. Adams reviewed Student's IEP's for 2011 and 2012 before he met with Student. He also requested writing samples from Student's present teachers and discussed with them Student's issues with writing in their classes. Student's study skills teacher, who at the time was Kathy Adams, indicated that Student was successful in copying and completing written work in her class at the same rate as his peers. Student's language arts and social studies teacher, Robert Cameron, informed Mr. Adams that Student had difficulty completing work on time in class. Mr. Cameron also indicated that Student's work done in class was much more legible than the work he did at home. Robert LaPorte, Student's math and science teacher, informed Mr. Adams that Student had difficulty with spelling as well as with writing in his class. In his review of Student's classroom work samples, Mr. Adams noted that Student's writing was generally legible although Student had difficulty with spelling.

60. Student demonstrated the ability to copy sentences at the rate of approximately 18 words per minute. Student's typing ability on the keyboard when copying sentences was much slower; his rate of typing was approximately 10 words per minute. When dictated sentences, Student was able to handwrite them at a rate of approximately 20 words per minute. His rate for typing sentences dictated to him was 15 words per minute. When asked to independently compose sentences, Student was able to handwrite them at a rate of 11 words per minute and at a rate of 10 words per minute when typing.

61. Mr. Adams noted that Student appeared familiar with a keyboard during the test. However, when Mr. Adams gave Student a separate keyboarding assessment,

Student could only type at approximately 11 words per minute, with 91 percent accuracy.

62. Mr. Adams recommended that Student continue to have access to a computer at school for purposes of word processing as an alternative to using a pen or pencil. He also recommended that Student continue to use a portable spell-checker. Mr. Adams did not believe that Student required any further assistive technology in order to access his curriculum.

63. Parents disputed the accuracy and validity of Mr. Adams's report for a number of reasons. First, they believed that Student's writing is much less legible than credited by Mr. Adams. Parents pointed out that the writing samples Student's teachers provided to Mr. Adams were generally final drafts that had gone through several revisions and reviews. Therefore, the samples did not accurately reflect Student's actual abilities. However, as Mr. LaPorte and Mr. Cameron informed at hearing, all of their students go through the same drafting process. The fact that Student was revising his work was commensurate with the process followed by the majority of his peers.

64. More significant is the fact that Mr. Adams took several writing samples himself from Student as part of his assessment. These samples were not revised. They are all legible. In any case, recognizing that Student did have difficulties in producing legible work, particularly when he is rushed, Mr. Adams recommended that Student have access to a computer in order to type his work. It is unclear why Student did not believe that this is an appropriate accommodation for his writing difficulties. Student presented no evidence at hearing to dispute Mr. Adams's findings and recommendations. During Student's IEP meetings, Mother mentioned that she believed Student required an iPad because he is a visual learner. However, Student presented no evidence that he required an iPad in order to make progress at school.

65. Parents also questioned the validity of Mr. Adams's assessment because his recommendations were the same as those already included in Student's operative IEP. Parents implied that Mr. Adams did not do an actual assessment of Student but rather copied the recommendations of a prior assistive technology assessment.

66. Student presented absolutely no evidence to support this implication. Mr. Adams testified at hearing that he met with Student and administered the assessment to him. Mr. Adams had not previously assessed Student. He administered a proper assessment using an appropriate assessment tool. The writing samples and typing samples produced by Student during the assessment were admitted into evidence. There is no evidence that anyone other than Student, whose signature is at the top of the page of his handwritten assessment samples, produced the samples. Student's contentions are based on unsupported conjecture. Mr. Adams appropriately assessed Student.

IEP PROCESS OF SPRING 2013

Background to the IEP Meetings

67. The relationship between Student's parents and the District is tense. There have been hundreds of emails between the parties. Many of the emails indicate a significant tone of sarcasm and belligerence on the part of Father. The District's responses have been courteous and professional. The same attitude permeated the five IEP meetings at which Parents were present. Father would often be confrontational and sarcastic. The District IEP team members, particularly Mr. Davis, who generally led the discussions, remained courteous, professional, and calm. They did not respond to Father's aggressive attitude but rather attempted to move the discussions forward so that all IEP issues could be covered.

68. Student's IEP process lasted approximately 13 hours. After listening to the recordings of the IEP meetings, the overall sense of the meetings is that there was disagreement between the parties and that Student's parents, particularly his father, were not going to permit the discussion to reach each subject unless and until the District agreed to adopt Parents' position on each aspect of the IEP. The District team members listened to the concerns voiced by Parents, discussed why they agreed or disagreed with those concerns, and made modifications to their proposals based on the input of Parents or Student's advocate where the District believed it was appropriate.

69. The emails and letters from Parents were sometimes written in English and sometimes in Spanish. Generally, but not always, emails from Father were in English. Those from Mother were always in Spanish as Mother cannot write in English. However, the emails from Student's family were generally signed as being from both parents.

70. At each IEP meeting, the District provided a Spanish speaking interpreter for Parents. Father, who is fluent in spoken and written English and Spanish, generally spoke in English. Mother always spoke in Spanish. She did indicate during one of the IEP meetings that she is able to read English. The District interpreter translated the entire IEP meeting discussion as well as all assessments and other documents discussed at the meetings into Spanish for Mother's benefit.

71. There is no evidence that Student's independent assessors, Ms. Priest and the Lindamood-Bell agency, ever provided Spanish translations of their assessments to Parents. In spite of the lack of Spanish translations of the independent assessments, Mother understood the information in those documents. Mother was Student's primary representative at hearing and examined most of the witnesses on direct and cross-examination. She referenced the independent assessments during her questioning of witnesses.

72. Although the District interpreter translated the IEP documents discussed at the IEP meetings into Spanish for Mother, the District has never provided Mother with a written Spanish translation of the IEP documents although Mother has requested them several times.

March 6, 2013 IEP Team Meeting

73. Parents and the District had agreed that the District would do an early triennial assessment of Student. Except for Mr. Adams's assistive technology assessment, the assessments were completed by late February 2013. On February 27, 2013, the District sent an IEP Team Meeting Notice to Parents, noticing the meeting for March 6, 2013, from 10:00 a.m. to 2:00 p.m. This notice met all statutory requirements. It is unclear if the District sent a meeting notice in Spanish as well as English. However, both Mother and Father signed the English notice indicating that they would both attend the meeting.

74. Although they agreed to attend, Parents typed an objection to the meeting across the notice in which they opposed the fact that the District was limiting the meeting time to four hours. Throughout the IEP process at issue in this case, Parents have objected to the District limiting the time of each IEP meeting. It is Parents' position that the District should have held one IEP meeting for however long it took to develop an IEP, even if that meant holding a meeting that lasted 12, 14, or more hours. Parents' position was unreasonable. The District IEP team members all had other duties, such as teaching classes, and other IEP meetings to hold. Fatigue was also a factor in such long meetings, and the District's interpreter found it difficult to continue translating for more than two hours at a time. The District agreed to hold as many meetings as necessary to discuss Student's IEP, but, after the first two meetings, which lasted almost four hours each, scheduled the meetings for two-hour blocks of time.

75. The March 6 IEP meeting went forward as scheduled. Present at the meeting was Leslie Williams, the District's interpreter; Courtney Goode, who was then the Principal at Roosevelt; Mr. Garcia, the school psychologist; Ms. O'Toole, Student's former special education teacher who continued as his case manager; Ms. Palmatier, the speech and language pathologist; Mr. Davis, the District's Supervisor for Special Education; Mother; and Father.

76. Father questioned why Kathy Adams, who was then Student's present special education teacher for study skills, was not present. Mr. Goode indicated that she would be arriving about 25 minutes later, as would Student's general education teachers.

77. The District had provided Parents with a meeting agenda at the beginning of the meeting. Father indicated Parents had their own agenda. Mr. Davis offered to incorporate issues from Parents' agenda into the one developed by the District. This offer was made several times over the course of the five IEP meetings attended by Parents. Father, however, would never agree to incorporate subjects from his agenda into the District's agenda. Rather, he insisted that the District instead follow Parents' agenda.

78. Instead of permitting the IEP team to begin to address Student's needs, Father immediately began confronting Mr. Goode, insisting that Mr. Goode define "special education." Mr. Goode's background is as a general education teacher and in school administration. He was present at this and subsequent IEP meetings because he was the school site administrator and properly represented the District as such. When Mr. Goode attempted to return the discussion to Student's IEP, Father, in a confrontational manner, stated that because Mr. Goode would not respond to the questions, he obviously did not know the definition of "special education." This is but one of the many instances where Father was argumentative and hostile, would refuse to

address IEP issues, would insist on taking time to discuss his criticisms of District staff and District failure to follow procedures, or would twist statements made into something that had not been actually said. Father's attitude made it difficult for the District to discuss concrete issues concerning Student's education and significantly protracted the IEP process. This ultimately resulted in a delay in finalizing Student's IEP.

79. Parents' advocate, Dr. Plotkin, had not been able to attend this meeting. Mr. Davis offered to halt the meeting and continue it so that Dr. Plotkin could be present. Parents declined the offer and the meeting proceeded.

80. Mr. Garcia then reviewed his psychological assessment of Student. He reiterated his report findings that Student's auditory processing and short-term memory ability were Student's weaknesses. Mr. Garcia concluded that these two deficits were impacting Student's ability to listen and retain information and were impacting Student's reading comprehension. He also discussed his findings that Student qualified for special education under the category of Specific Learning Disability due to the severe discrepancy between his ability and achievement in written expression and, to a lesser degree, a discrepancy in Student's reading comprehension ability and achievement. However, Mr. Garcia did not find the last to be as significant because Student's reading comprehension achievement score was in the average range.

81. During his testimony at hearing, Mr. Garcia opined that Student's low reading comprehension scores on some of his assessments, such as the Woodcock-Johnson Achievement Test, were due to Student's short-term memory deficits, his inattention deficits, and his auditory processing deficits. Mr. Garcia indicated that there is no "cure" for these types of deficits. Rather, the approach of educators is to teach students how compensate for the deficits, to teach them new learning methods and skills, and, in particular, to provide accommodations to lessen the impact of the deficits.

82. Special education teacher Kathy Adams joined the IEP meeting about a half hour after it started in order to discuss Student's present levels of performance in her class. She was Student's study skills teacher his second semester of sixth grade. Student did well in her class but needed direction. He would not generally raise his hand to ask questions. Student needed to be taught to be more proactive for himself. However, Student's lack of initiative was not hurting Student in Ms. Adams's class because she would approach Student herself to offer assistance and suggestions. Ms. Adams was also attempting to teach Student how to self-advocate and was working with Student's general education teachers to do the same. With regard to his work productivity, Student completed all assignments he brought to Ms. Adams's class. Once he began his work, he was focused.

83. Parents expressed concern that the special education study skills class was not of benefit to Student. However, when Mr. Davis asked whether they wanted to discuss placing Student in a special education resource class setting or in a special day class, Parents did not respond.

84. Although Parents stated that they did not believe Student should be in general education classes, during the course of the five IEP meetings they attended, they made only brief suggestions for other placements. Toward the end of the March 6 IEP meeting, Father expressed a desire for Student to be placed at a non-public school. Non-public schools are private schools certified by the State of California to provide special education instruction to special education students when a school district cannot meet a child's needs. Parents offered no explanation during the IEP meetings as to why Student required a non-public school placement, why the District could not provide Student with an appropriate education, or how such a placement would benefit Student or address his unique needs. Nor did Student provide any evidence at hearing in support of the necessity of a non-public school placement for Student.

85. During the IEP meetings, Parents also raised the suggestion that the District place an aide in Student's classrooms as an accommodation. Parents did not explain why an aide was necessary for Student or what the aide would do specifically to assist Student. Student raised the issue of an aide during the hearing through testimony of Parents, but failed to provide any evidence that he required an aide in order to access his education. Parents also suggested at the IEP meetings that Student needed to be in a special day class of some sort for mathematics instruction. Their only basis for requesting such a placement was Student's low math grades. Parents did not acknowledge Student's average math achievement test scores when they requested the special education math class for him.

86. District IEP team members explained that Student was of at least average intelligence and that general education classes were the LRE for him. They explained that their goal was to make Student successful in general education. Father reiterated that he felt that Student could not do the work in general education.

87. Mr. Davis asked Parents if they had any questions for Ms. Adams. They did not have any. The IEP team then orally excused Ms. Adams from further attendance at the meeting. Parents did not object to Ms. Adams's early departure.

88. Robert Cameron, Student's English language arts and social studies teacher, then discussed Student's present levels of performance in his class. Student's primary difficulty in Mr. Cameron's class was his lack of follow-through in note taking. Taking notes on course materials was a significant part of Mr. Cameron's social studies class. The students were directed to take comprehensive notes and reduce the notes to a summary. They were supposed to use the notes during tests. The students then hand in the notes and were given credit for having taken them. Mr. Cameron was certain Student was taking good notes because Student was writing the summaries of them. However, Student would inevitably forget to bring the notes back to class. He was

therefore not able to use them for his tests, which caused him to do poorly on the tests. Student was also not getting credit for turning in the notes. All of this combined to lower his overall grade considerably.

89. Mr. Cameron had an after school study hall in his classroom that was open to all of his students. Student often came to the after school class. When Student did work with Mr. Cameron after school, he did a fantastic job. Student could write beautifully when he took the time to do the work correctly and when he was focused. Student's comprehension of the material was at grade level; his problem was his lack of focus and organization, and the fact that he often hurried through his work. Mr. Cameron was attempting to teach his class how to do outlines, take notes, perfect organizational skills, and write paragraphs. All of these were of benefit to Student.

90. Mr. Cameron then left the IEP meeting. He was replaced by Student's math and science teacher Robert LaPorte. Mr. LaPorte discussed Student's present levels of performance in his classes. Student's strengths in math were in his ability to orally explain math concepts and orally do problems. However, Student's grade in math was significantly depressed because Student did not do his homework. Even if he did it, Student was not turning it in. This negatively affected Student's grade because Mr. LaPorte based his quizzes on the homework. Since Student was not doing the homework, he was not up to speed on the areas covered in the quizzes. Student was additionally not receiving the points for homework. Mother agreed that Student often hid his homework from her, or would say that his teacher had been absent and he therefore had no homework. This was incorrect as Mr. LaPorte had only missed one day of school as of this IEP meeting.

91. Student's teachers agreed with Mr. Garcia that Student's memory and attention deficits were part of Student's "make-up." The deficits therefore would always be with Student. The appropriate way to address the deficits was to provide Student the

necessary accommodations to permit him to do higher level work. Mr. LaPorte was already providing Student with accommodations by only requiring him to complete about half the assigned work. For example, for his semester science project, Mr. LaPorte only required Student to turn in a three-page written report, rather than the five to six pages he required of the other students. Mother agreed with the District that the accommodations were appropriate.

92. After Mr. LaPorte finished his discussion of Student's present levels of performance in his classroom, the IEP team, including Parents, orally agreed that he could leave the meeting and return to his classroom.

93. Ms. Palmatier then discussed her speech and language assessment. She explained that the test she administered had no specific time requirement. She attempted to explain to Parents that her assessment was designed to address Student's use of oral language. Her assessment did not address reading and writing abilities.

94. Ms. Palmatier reviewed her test results. She explained that Student had better speech patterns than many of his peers and that he had no deficits in either expressive or receptive language.

95. As discussed above, Parents could not understand that Student's deficits in written expression, such as problems he had writing plurals, did not translate to a deficit in oral expression. Parents kept trying to refocus Ms. Palmatier on Student's writing issues in spite of the fact that Ms. Palmatier does not assess writing and in spite of the fact that she explained that writing and oral expression deficits do not necessarily coincide.

96. Mr. Garcia again tried to explain to Parents that Student's processing deficits were the main source of Student's writing deficits. Student needed more time to do his work, needed visual supports, needed to do advance planning of lessons, needed

repetition of instructions, and needed to be better organized. Student had the skills to do grade level work if given the necessary accommodations.

97. Ms. O'Toole then reviewed her academic assessment. Parents' concern was not with her test results. Rather, they were concerned about Student's poor scores on the latest administration of the California English Language Development Test (CELDT).

98. As an English language learner from a home where Spanish was the primary language, Student has been provided with English language interventions since kindergarten. Every year, the District administered the CELDT to him. In kindergarten and first grade, the CELDT only covered listening and speaking in English, not reading and writing. Student's scores for kindergarten were in the beginning level. In first grade, Student's scores had increased to the intermediate level in listening and speaking. In second grade, Student was tested for the first time in reading and writing English. He scored at the beginning level in reading and at the early intermediate level in writing. His scores remained at the intermediate level for listening and speaking. In third grade, Student's scores on the CELDT remained at intermediate for speaking, but had advanced to intermediate level for reading and writing, and were at the advanced level in listening. In fourth grade, Student's scores went down to the early advanced level in listening but went up to early advanced in speaking. Student remained at the intermediate level for reading and writing. In fifth grade, Student's scores were at the early advanced level in all four areas. If a student remains at early advanced on the CELDT and scores at least at basic on California State Testing, a district may declassify the student as an English language learner. Student's results on the California State Tests for fifth grade were at the proficient level in both mathematics and English language arts. He scored at the basic level in science. For sixth grade, Student's scores decreased to the level of basic in English language arts and to below basic in math. However, although the test was taken

in April of 2013, when Student was in sixth grade, the results were not provided to the District or to Parents until the beginning of the following school year.

99. Student's scores on the CELDT plummeted when he was administered the test in the middle of sixth grade. He scored in the beginning range in listening, reading, and writing, and in the intermediate range in speaking.

100. Parents felt that Student's low performance in sixth grade corroborated their belief that he needed some type of extra instruction in reading and writing, although they had no explanation for the significant drop in Student's scores. They believed that his IEP should have specifically addressed the deficits indicated on the sixth grade administration of the CELDT.

101. Anne Green testified at the hearing. She is a District Director for Curriculum and Instruction in the area of English language development. Before July 2013, she held the position of Coordinator in the same area of administration for the District. Ms. Green has not provided instruction to Student and does not know him. However, she was aware that his CELDT scores had dropped dramatically. The drop was very surprising to her. In Ms. Green's opinion, it is unlikely that a student would experience so significant a drop in his ability to speak, read, and write in English. If a student has reached as high a level in English language development as had Student, there would have to be some other reason for the abrupt drop in test scores.

102. Ms. O'Toole also believed that Student's sixth grade CELDT scores were an anomaly. Ms. O'Toole, who is bilingual in English and Spanish and who has been a bilingual special education and general education teacher, was firm in her belief that Student had not lost his ability to read, write, and listen in English overnight, as indicated by his sixth grade CELDT scores. Given Student's generally average academic achievement test scores, and his proven ability to read, write, and understand English in

class, something other than Student's abilities in English affected the outcome on his most recent CELDT scores.

103. Mr. Cameron was also qualified to evaluate Student's English language abilities. Mr. Cameron has Bachelor's degrees in English linguistics and Spanish, has a teaching credential to teach both English and Spanish, and has a bilingual cross-cultural teaching credential. He teaches both general education English classes as well as English language development to English language learners, which he has been doing for 24 years.

104. Mr. Cameron agreed that Student's CELDT scores for sixth grade were not an accurate reflection of Student's English language abilities. Student's scores were consistently improving until sixth grade. The scores Student received that were at the beginning level were indicative of a child who was struggling with learning English, not with a child, such as Student, who had been taught in English for over six years, whose test scores had shown consistent improvement, and who was perfectly capable of reading, writing, and understanding English. Student's CELDT scores for sixth grade were therefore an anomaly.

105. Student presented no evidence to controvert the opinions of Ms. Green, Ms. O'Toole, and Mr. Cameron that Student's low sixth grade CELDT scores were not an indication that Student continued to need specific instruction in English language development. The evidence presented by the District was substantial that Student's struggles in reading and writing were based on his deficits in attention, auditory processing, and short-term memory rather than on deficits with the English language. There is no evidence that Student required specific English language development instruction or goals to address his unique needs. The evidence supports the District's opinion that Student's CELDT scores for sixth grade were the result of outside factors, such as inattention on Student's part, rather than an indication that his ability to

understand, read, and write English had suddenly dropped from an early advanced level to that of a beginning English learner.

106. The March 6 IEP meeting ended with a short discussion of potential goals for Student. Father wanted goals that would cover all of the California curriculum standards for sixth and seventh grade since Student's IEP would be in effect during parts of both grades. The District had drafted four proposed goals. The District believed that it was better to focus on fewer goals that covered all of Student's areas of needs, rather than have many goals that would be difficult to address throughout Student's class day. Mother agreed that the quality of the goals was more important than the quantity of the goals. The team decided to end the meeting without starting a full discussion on goals because Parents wanted Student's advocate to be involved in the discussion. Mr. Davis sent the proposed goals to Parents after the IEP meeting for their review and in order for Student's advocate to review them.

107. Ms. Williams, the interpreter, translated the IEP notes into Spanish for Mother. The IEP team agreed to meet the following week. The District agreed to coordinate the attendance of everyone, including Dr. Plotkin, by email. The District did not send out a formal meeting notice. However, Parents received emails concerning the meeting and there was no confusion as to when and at what time the meeting would take place.

March 13, 2013 IEP Team Meeting

108. The IEP team members present at this meeting were Parents; Student's advocate Dr. Andrea Plotkin; District interpreter Ms. Williams; Mr. Davis; Mr. Goode; Ms. O'Toole; Mr. Garcia; and Mr. Cameron. Ms. Adams was present for part of the meeting. The meeting began with a discussion between the parties as to how long the IEP meetings should last. The District continued to have concern that meetings lasting more than two hours were difficult for the interpreter. Mr. Davis assured Parents that the

District was willing to hold as many two-hour IEP meetings as might be necessary to develop Student's IEP.

109. The District had just received the assistive technology assessment completed by Jeff Adams. Mr. Davis provided a copy to Parents at the beginning of the meeting. Mr. Adams was not able to be present at this meeting. Ms. O'Toole therefore reviewed the report with the team. Mr. Adams did not utilize any standardized tests in his assessment. His report is short and to the point. It contained copies of the writing samples he reviewed in assessing Student. Ms. O'Toole was able to adequately review the report with the team, particularly given her training in assistive technology.

110. Father expressed concern that Student's access to the assistive technology described in his present IEP was not being implemented. Although Mr. Davis attempted to turn the discussion back to the development of Student's new IEP, Father continued to insist on discussing implementation issues with Student's present IEP. This was a pattern throughout the IEP process. Parents would raise issues such as their belief that Student's present IEP was not being implemented, or issues involving Student's present class assignments, or issues regarding Student's last IEP process. The District, primarily through Mr. Davis, would politely explain that it would be happy to arrange other meetings to address Parents' concerns, but that they needed to use the IEP meeting time to focus on development of Student's new IEP or the IEP would never be completed. Dr. Plotkin also attempted to bring the discussion back to Student's IEP, particularly the discussion on goals. However, Father would often continue to press discussion of the issues that he wanted to address rather than return to the specifics of developing Student's new IEP. While the issues Parents raised were certainly of concern to them and affected Student's education as a whole, Parents' insistence on discussing issues through hours of IEP meetings prevented the IEP team from moving forward with creation of Student's new IEP. This considerably protracted the IEP meetings, prevented

a new IEP from being developed, and contributed to the tension between Parents and the District.

111. Since Dr. Plotkin had not attended the March 6, IEP meeting, the IEP team spent some time discussing issues that had been discussed previously. For example, the team again reviewed Student's present writing levels. Father did not believe that Student was writing at a sixth grade level. Ms. Adams and Mr. Cameron reviewed work that Student had completed that indicated to them that Student was within the range one would expect of a sixth grader. Ms. Adams explained that there is a broad range of ability in any sixth grade class. Mr. Cameron explained that many of the writing assignments were based on prompts given to the students to which they were expected to respond. Student was capable of doing work at that level and had responded appropriately on many of his assignments.

112. The team then began discussing appropriate goals for Student. Dr. Plotkin had reviewed the District's proposed goals. Her primary criticism was that the baselines the District had used were taken from Student's scores on the academic achievement portion of the District's triennial assessment. She believed that the baselines should be the same as the goals' objectives and therefore should be based on the work he was producing in class. Dr. Plotkin also made suggestions for how the goals could better address Student's writing deficits. Subsequent to this IEP meeting Mr. Davis corresponded with Dr. Plotkin regarding the goals. The District changed the baselines pursuant to Dr. Plotkin's suggestions and added to the goals to address some of her concerns. The District also developed a fifth goal based on input from Parents and Dr. Plotkin. Dr. Plotkin agreed that the writing goals addressed Student's needs and were otherwise appropriate.

113. The District ultimately developed two writing goals for Student. The goals were crafted and based on suggestions from Dr. Plotkin. One goal addressed Student's

difficulty in writing and organizing paragraphs for expository writing. The other goal addressed Student's difficulties in editing and revising his written work. Dr. Plotkin agreed the goals as revised during the IEP meetings were appropriate.

114. Parents did not dispute that the writing goals were appropriate. However, because the goals only state that they address sixth grade writing standards, Parents believed that the goals would not be appropriate for Student in seventh grade. Although it would have been clearer for the District to have included a reference to seventh grade in the goals, there is no evidence that the goals as written would not meet Student's needs. First, there is no evidence that Student met sixth grade writing standards by the end of the 2012-2013 school year when he finished sixth grade. Although Parents and Student's advocate did not disagree with the writing goals, Parents never consented to them. Therefore, the goals were never implemented. More important is the fact that Student's placement is in general education academic classes. Therefore Student, as all other pupils in his classes, would be taught to seventh grade standards as part of the general education curriculum regardless of whether Student's goals specified seventh grade standards as their objectives. Student had already started seventh grade at the time of the hearing. He presented no evidence that he is not being taught seventh grade curriculum. He presented no evidence that he would not progress appropriately in his studies because the proposed writing goals did not also specify seventh grade standards as an area of need.

115. The IEP team spent considerable time discussing the study skills goals for Student. The District team members as well as Dr. Plotkin recognized that poor study skills and organization skills were the greatest impacts on Student's failure to progress academically. The District modified its proposed study skills goals to include suggestions from Dr. Plotkin. Ultimately, the team decided on three study skills goals. One goal was designed to have Student track his assignments by writing them in a daily planner. The

second goal required Student to complete 90 percent of his class assignments. He was presently completing less than 75 percent of his work. The third goal addressed Student's difficulty with staying on task. Student was only able to stay on task for 15 minutes without prompting. The objective of the goal was to have Student independently remain on task for at least 30 minutes.

116. Parents contested the propriety of these goals mainly because they did not believe that the study skills class was of benefit to Student. However, the evidence in this case clearly shows that Student's lack of organization, his inability to complete assignments in class, and his struggles to complete and turn in homework have been the greatest obstacles to his success. Student's academic achievement test scores indicated that he is, in fact, retaining information and is capable of doing school work at grade level. However, his grades are consistently below the level of "C" because Student does not complete his work. All of Student's sixth grade teachers emphasized that it was the lack of completed assignments rather than Student's lack of understanding of the material that depressed his grades.

117. The IEP team spent considerable time discussing Ms. Adams's study skills class. Ms. Adams addressed Student's reading comprehension deficits by guiding him so that he could comprehend what he was reading. She taught him how to relate ideas and concepts, and how to take tests. She taught Student to think things through on his own so that he could hopefully apply the skills she is teaching to his other classes. Ms. Adams addressed the individual needs of each of her students, all of whom have IEP's. Student needed both the study skills goals as well as the study skills class in order to address these issues.

118. Parents also objected to the study skills goals because the District placed Student in a special education study skills class, similar to a resource class, in order to address the goals. Student had a sincere desire to be in a band class instead. However,

as a general education pupil, Student was only permitted one elective. If he was placed in the band class, he would either have to forfeit the study skills class or lose one of his academic classes, neither of which was appropriate for him. When Parents broached the issue of band during the IEP meetings, the District pointed out that Student needed to be in all required classes. Parents acknowledged that necessity. They equivocated on the issue of whether Student should not be assigned the study skills class. Parents offered no solution as to how Student could have a band class and still be assigned all required electives and study skills. Although Student preferred the band class, he presented no evidence that he required band in order to make meaningful educational progress.

119. Parents also believed Student required a goal in math. The only basis for this opinion is the fact that Student's grade in math often was a "D" or close to an "F." However, the compelling evidence is that Student's failure to get at least a "C" in math was not based upon his lack of ability in math but on his failure to do the work in his math class. Mr. LaPorte was clear that Student is capable of passing the material if he would be more attentive and would turn in assignments. Most significant is the fact that Student's scores on the mathematical portions of the academic achievement testing were in the average range for a child of his age, commensurate with his cognitive abilities. The test results indicated that Student understood mathematical concepts and, in spite of his attention, memory, and processing deficits, retained enough information to score a 99 standard score in math calculation and a 100 standard score in math reasoning.

120. Parents further believed Student needed a goal in reading comprehension. Parents raised this issue during several of the IEP team meetings. Their belief was based on the fact that Student's test results on Ms. Priest's independent assessment indicated Student had a severe reading comprehension deficit. Parents also believed that Mr. Garcia's finding of a slight discrepancy between Student's reading ability and reading

achievement necessitated a goal dedicated to reading comprehension. However, as discussed above, Student's reading comprehension score on Ms. Priest's assessment is suspect. His standard score of 45 was at the level of a person with low cognitive abilities. Student's cognitive abilities are in the average to high average range. Additionally, Student's reading comprehension scores on a number of other assessments, including the Lindamood-Bell and District administrations of the Gray Oral Reading Test, indicated that Student's reading comprehension was at or above average. Student's reading comprehension score on the Woodcock-Johnson was also in the average range.

121. Significantly, Mr. Garcia, Ms. O'Toole, and Mr. Davis concurred that Student's reading comprehension issues, if he had any, were due to his attention, short-term memory, and processing deficits. Therefore, the study skills goals and accommodations recommended for Student would address any difficulties Student had in reading comprehension. Student presented no evidence at hearing that controverted the testimony and evidence presented by the District on this point.

122. Although the March 13, 2013 IEP meeting lasted almost 4 hours, in addition to the almost three-and-a-half hours spent at the March 6 IEP meeting, Parents were still focused on their disputes with the District's assessments and with the proposed goals. After more than seven hours of meeting, Parents and the District had not been able to finalize any issues with regard to Student's IEP. Father indicated that he still wanted to discuss the study skills goals and class proposed by the District and still wanted to review other goals. Dr. Plotkin was more realistic; she noted to Parents that as long as Student was approaching sixth grade levels, there was no strong basis for Parents' concerns. The parties discussed the date and time for the next meeting and who would be in attendance and agreed to continue the meeting on March 18. Although the District did not send Parents a formal IEP meeting notice, the District and Parents corresponded through emails to confirm the date and time of the meeting.

March 18, 2013 IEP Team Meeting

123. Student's IEP team meeting proceeded as planned on March 18, with Parents in attendance. They therefore had adequate notice of the meeting. The District IEP team members who attended the meeting were Ms. Williams; Mr. Goode; Mr. Davis; Ms. O'Toole; Ms. Palmatier; and Mr. Cameron. Mr. Cameron left halfway through the meeting when Mr. LaPorte took his place. Also present was District speech and language supervisor Jo Taylor. As mentioned above, Ms. Palmatier asked Ms. Taylor to participate in the meeting to answer questions from Parents, who continued to question the validity of Ms. Palmatier's assessment as well as the lack of speech and language services and goals for Student. Ms. Taylor did not testify at the hearing. Mr. Garcia, who had already discussed his assessment in detail over the course of the prior two IEP meetings, arrived about an hour after the meeting started. Dr. Plotkin, Student's advocate, also joined the meeting after it had started.

124. Father started the meeting on a confrontational note. The District had scheduled the meeting for a two-hour block of time in accord with Mr. Davis's prior discussion with Parents. Father continued to object to any time limits being placed on the IEP meeting, insisting that the meeting last as long as it took to develop an IEP. Father's position on this point was unreasonable and oppressive. His discussions on this and other matters not related specifically to the development of Student's IEP took up valuable time that should have been used to discuss specific IEP issues.

125. Father also made a statement that the District was not permitting Parents to participate in the IEP process because the District would not follow the agenda prepared by Parents. Mr. Goode asked Parents what other information they wanted to be included in the discussion or what they wanted to change or add to the agenda. Parents would not answer. It was clear that Parents were only interested in following

their proposed agenda rather than trying to work with the District to include items on the agenda that were of concern to all parties.

126. Parents' position that they were not permitted to participate in the IEP process is not supported by the evidence. The audio recordings of the IEP meetings are conclusive proof that Student's advocate fully participated in the meetings, asked questions, gave input, and affected modifications to the District's draft proposals. The District discussed and considered Student's independent assessments, asked Parents for their position on the issues, and explained the District's position when it did not coincide with that of Parents.

127. Parents continued to question Ms. Palmatier's assessment. Even after Ms. Taylor reiterated Ms. Palmatier's explanation of the purpose of a speech assessment and the fact that such an assessment was not related to a child's written expression abilities, Parents were not able to understand the difference. As stated above, there is no evidence that Student has any deficits in receptive or expressive language.

128. Parents again questioned the fact that Student was not receiving English language development intervention. However, as stated above, they presented no evidence other than Student's sixth grade CELDT scores that would support a finding that Student had somehow regressed to a beginning level in his English comprehension, reading, and writing abilities. It appears that Parents are cognizant of this because Father admitted during this IEP meeting that Student at that point in time had more of a command of English than of Spanish. Given that recognition, it is perplexing why Parents persisted in arguing that Student's English fluency had dropped based only on the results of the sixth grade CELDT.

129. The District had rewritten Student's proposed goals and added a goal to conform to Dr. Plotkin's suggestions. The IEP team continued to discuss Student's goals because Parents wanted to add more writing goals. However, Dr. Plotkin informed

Parents that the present writing goals contained most of the issues which Father had expressed concern about.

130. The IEP team then discussed Parents' request that Student attend ESY classes during the summer. The District disagreed that Student required the classes, which are provided to special education students who demonstrate a pattern of academic regression over the summer and do not show recoupment of skills once the new school year commences. Most school aged children regress somewhat over the summer break but then re-learn the information when it is reviewed during the beginning of the new school year. Student had not demonstrated a pattern of regression to the point where he was not able to re-learn information he forgot over the summer. Student's issue was with short-term memory deficits, not long-term memory deficits. The fact that Student performed so well on his academic achievement assessment indicated that he was able to retain information. Other than Student's low grades, which were primarily the result of his lack of organization and completion of assignments, Student presented no evidence to support his position that he required ESY instruction in order to receive a FAPE.

131. As at previous IEP meetings, Father continued to try to turn the discussion to issues outside of the IEP process. Although Father again told the District team members that they were not addressing his concerns, Dr. Plotkin disagreed and specifically told Father that the District had heard his concerns. She also tried to re-direct Father's discussions to Student's present IEP but did not have much success.

132. The March 18 IEP meeting ended without agreement on any facet of Student's IEP. By this time, the IEP team had spent almost 10 hours attempting to develop an IEP for Student without success. The IEP team, including Parents, agreed that another meeting would be scheduled although Parents continued to argue that the meeting not be set for only two hours.

April 10, 2013 IEP Team Meeting

133. Mr. Goode sent an email to Parents on April 1, 2013, offering several alternative dates to hold the next IEP meeting in the hopes of finalizing Student's IEP. Mr. Goode asked Parents to suggest other dates if the dates he proposed were not available to them. The email was polite, professional, and friendly.

134. Father responded to the email the same day. For some reason, although Mr. Goode's email had been innocuous, Father's response was confrontational. He accused Mr. Goode of "abusing my son's need for special education." He also accused the District of denying Student a FAPE. Father did not request alternative meeting dates at that time.

135. On April 3, Mr. Goode sent an email to Parents reiterating the District's desire to complete Student's IEP and asking them to select one of the proposed meeting dates. Parents did not reply. On April 5, Mr. Goode sent Parents an email, along with an IEP meeting notice, scheduling the meeting for April 10, 2013, from 9 a.m. to 11 a.m. He asked Parents to let him know if they had any specific topics they wanted covered at the meeting. Mr. Goode sent a copy of this email to other IEP team members, including Mr. Garcia.

136. Mr. Garcia sent a responsive email to Parents and the other IEP team members on April 8 informing them that he would only be able to meet for the second half of the meeting.

137. On April 8, 2013, in response to Mr. Garcia's email, Parents sent an email to Mr. Garcia with copies to other District IEP team members, stating that they wanted to hold the meeting when all requested IEP team members could be present for the entire meeting. In addition to Mr. Garcia, Parents wanted Dr. Garner, Mr. Adams, and Ms. Greene to attend the IEP meeting. They also again contested the two-hour time limit the

District was placing on each meeting. Parents did not suggest an alternative date in this letter. They did not inform the District that they were not available on April 10.

138. In the evening of April 8, Mr. Garcia sent another email that indicated other dates on which he could be present for the entire IEP meeting.

139. On April 9, 2013, at 5:46 p.m., Parents sent an email addressed to Mr. Garcia, Mr. Goode, Mr. Davis, and Dr. Doyle, the District's Director of Special Education, asking that the District reschedule the IEP meeting for April 17, 2013. The email was sent after normal business hours. The email was in Spanish and asked that the District have Ms. Williams translate it into English. Although Mr. Garcia speaks and reads Spanish, Mr. Davis, Mr. Goode, and Dr. Doyle all had to have correspondence from Parents written in Spanish translated into English. Parents did not state in this email that they were not available for the IEP meeting scheduled for April 10 or that they were not going to attend it. The email was not translated into English prior to the time scheduled for the April 10 IEP meeting.

140. Since Parents had not indicated that they were unable or unwilling to attend the April 10 meeting, the District believed that they would be present. The District team members therefore gathered at 9:00 a.m. on April 10 to start the meeting. The District had arranged for Ms. Williams to attend the meeting to translate for Mother because it believed Parents would attend. The other District members who attended were Mr. Goode; Mr. Davis; Mr. Cameron; Ms. O'Toole; and Ms. Palmatier.

141. The District team members waited approximately 15 minutes but Parents did not arrive. The District did not call Parents to confirm if they would be coming. The District did not cancel the meeting to find out what had happened to Parents and to see if another date would be more convenient. There is no evidence that Parents had ever deliberately missed one of Student's IEP meetings.

142. When Parents failed to arrive after 15 minutes, the District proceeded with the meeting. The District IEP team members finished the discussion of Student's goals, placement, services, and accommodations. They finalized Student's IEP.

143. Although Parents did not inform the District before this meeting was held, Parents did, in fact, have a conflict. At the same time the District had scheduled Student's April 10 IEP meeting, Parents had to attend a program for one of their other children at a different school. When they were finished with that appointment, Parents went to Student's school to see what had happened about the IEP meeting. When Parents arrived at Roosevelt, the District was just concluding Student's IEP meeting. Parents did not ask the District to continue the meeting now that they were present. Mr. Davis spoke with Parents and told them he would send the final IEP offer to them that day. The District sent the IEP document to Parents as promised.

May 13, 2013 IEP Meeting

144. Parents were understandably upset and concerned that the District had held the April 10 IEP meeting without them. They sent emails to the District explaining that they had had a conflict on that day and asking why the District had not re-scheduled the meeting for April 17 as they had requested. A series of emails ensued between the parties. The District agreed to hold another IEP meeting to discuss any and all issues concerning Student's IEP. The District and Parents finally agreed to hold another meeting on May 13, 2013. Parents were sent a notice of the meeting.

145. Present at the May 13 IEP meeting were Parents; Ms. Williams; Mr. Davis, Mr. LaPorte, Ms. O'Toole, Mr. Garcia, and Candice Kordis, a District administrator who was present as school site administrator in place of Mr. Goode. Dr. Plotkin did not attend the meeting.

146. Parents had requested the District to have present Dr. Allison Garner, who had administered the Test of Written Language to Student; Jeff Adams, the assistive

technology assessor; and Anne Green, then the Coordinator of the District's English language development program. The District declined to require those three people to be present since they were not mandatory IEP team members.

147. Parents also took the position that Ms. O'Toole was present solely as a District administrator. With Ms. Kordis and Mr. Davis, Parents counted three District administrators present. They demanded that two of the three leave the meeting. When the District declined to do so, Father called the police department because he contended that the extra District administrators were "trespassing" at his son's IEP meeting. Parents left the meeting to wait for the police. They returned a short while later to the meeting and the meeting proceeded.

148. The District treated the May 13 IEP meeting as if it had not held the April 10 meeting at which Parents were not present. They treated every aspect of the IEP discussion as if no decisions had been finalized by the District at the April 10 meeting. The District opened the discussion to all remaining aspects of Student's IEP.

149. Mother wanted to have Mr. Adams present to ask him questions about his assessment because she had doubts that he had actually done the assessment. Mr. Davis, who has a Master's Degree in Educational Technology, explained that Mr. Adams had not used a standardized test in his assessment so there was nothing specialized to interpret. He also clarified that the assessment report explained in detail how Mr. Adams had administered the non-standardized test.

150. Mother was still adamant that she wanted to talk to Mr. Adams. Mr. Davis therefore offered three alternatives: he could call Mr. Adams by telephone so that Mother could ask her questions; he could email the questions to Mr. Adams for his responses; or the District could schedule another meeting. Parents did not agree to any of the alternatives.

151. Father then accused the District of refusing to provide Parents with documents they had requested. When Mr. Davis asked Father to identify the documents in question, Father refused to, insisting instead that Mr. Davis check his "box" to find what Parents wanted.

152. Parents again brought up their concern that the District had not formulated speech goals for Student. Again, Ms. Palmatier attempted to explain that Student did not have a receptive or expressive speech deficit.

153. Robert LaPorte attended the May 13 IEP meeting as the general education representative. He again reviewed Student's lack of completed assignments in math, and again reiterated accommodations he had implemented for Student in an effort to get Student to complete work and turn in assignments. Mr. LaPorte again told Parents that Student was able to understand oral instructions and could do the work when he focused on it.

154. Father again kept discussing Student's classwork. He refused to be redirected to discussing actual issues with the development of Student's IEP. Mr. Davis told Parents that he could arrange a separate meeting to discuss Student's school work. He tried to turn the discussion back to the issues, but Father would not permit him to do so.

155. Although Dr. Plotkin had already agreed to the five goals she and the District had developed together, Parents again wanted to discuss adding more goals. Mother in particular wanted to add a self-advocacy goal for Student because he was too shy to ask for help. Student had told her that he resisted asking for assistance because he did not want his teachers or the other students to think he was stupid. At a previous IEP meeting, Ms. Adams had agreed that Student did not ask her questions or ask for help; rather, Ms. Adams had to consistently approach Student. Mother also asked for goals in the area of reading comprehension and vocabulary. Mr. Davis yet again

explained that it was not appropriate to write goals in areas in which a child does not have deficits. Reading and vocabulary as well as the area of social/emotional were not areas of deficit for Student. Parents again focused on the low reading comprehension score from Ms. Priest's independent evaluation although the issue had been discussed literally for hours at prior IEP meetings.

156. Mother then broached, for the first time at any of the IEP meetings, that she wanted the District to use different reading methodologies with Student. She suggested one methodology called the Slingerland method and another called Wilson Reading. However, those programs are used with children who have a reading comprehension deficit which Student does not have. The programs Mother suggested would slow Student down because they teach skills Student already possessed. Additionally, they were programs usually taught in a one-on-one setting, which would remove Student unnecessarily from the general education classroom and would therefore not be the LRE for him.

157. Student presented no evidence that the reading methodology already being used in his classrooms was not appropriate for him. He presented no evidence that he could only make meaningful educational progress if another reading methodology was provided to him. He presented no evidence that the methodologies Mother suggested were appropriate for him.

158. Mother also requested that the District provide Student with an iPad as assistive technology. Student used one at home with educational programs Parents provided him. However, Student presented no evidence that he required an iPad in order to make meaningful progress in his education. The District already provided Student with visual accommodations in his classroom to support his visual learning style and, as discussed below, included visual supports as accommodations in its proposed IEP.

159. Mr. Garcia again discussed the accommodations that he believed would benefit Student. He reiterated that Student required a lot of repetition; that Student needed to preview upcoming assignments and curriculum; that he needed to review terminology to make certain he understood it; that directions should be repeated to Student; that visual supports be provided to him; that he would benefit from extra time on assignments; and that Student should use word banks and a thesaurus when writing. Student was capable of doing grade level work with the supports suggested by Mr. Garcia.

160. Parents again requested that Student be placed in band. The District team members again discussed the fact that Student had only one elective and would have to drop study skills in order to take the band class. Parents had no real answer to this dilemma. As stated above, Student required the study skills class in order to meet his goals and progress in the curriculum. Although he preferred the band class, it was not necessary in order for Student to receive a FAPE.

161. Rather than allow the District IEP team members to turn the discussion back to specific IEP concerns, Parents spent the remainder of this IEP meeting discussing issues that did not concern Student's IEP or arguing about the length of the IEP meetings and how many District administrators could be present. The meeting ended on a tense level, with IEP issues not fully discussed. By this time, the District had held approximately 12 hours of IEP meetings at which Student's parents had been present.

May 28, 2013 IEP Meeting

162. Parents and the District agreed to convene another IEP meeting on May 28, 2013. The District sent a meeting notice in English addressed to both Father and Mother. A Spanish version of the meeting notice was also sent to them for the May 28 IEP meeting. However, the salutation inadvertently was only addressed to Father rather than to both parents.

163. For some inexplicable reason, Parents treated this omission on the Spanish meeting notice as an indication that the District was not inviting Mother to the IEP meeting. Therefore, only Father appeared for the meeting. This was an exaggerated and irrational response to what was clearly an inadvertent omission by the District. The District explained this to Father at the beginning of the meeting and indicated that Mother was, as always, a welcomed participant in Student's IEP process. Mr. Goode testified without contradiction that the District informed Father that it would wait for Mother to arrive. Father indicated that Mother would arrive later. He did not ask for the meeting to be postponed and immediately began discussing issues concerning Student, the IEP, and the IEP process, rather than wait for Mother to arrive.

164. The District IEP team members present for this meeting were District interpreter Ms. Williams (indicating that the District intended and expected Mother to attend the meeting); Mr. Davis; Ms. O'Toole; Mr. LaPorte; and Mr. Goode. Father objected to Mr. Goode's presence and demanded that he leave; the District declined to accede to Father's demand.

165. The District attempted to turn the discussion to the portions of Student's IEP that needed further elaboration. Father would not permit discussion of the IEP. He kept returning to the omission of Mother's name from the Spanish IEP meeting notice, in spite of the District having addressed the issue and apologizing for the omission. Father then kept insisting that Mr. Goode leave the meeting. He insisted that Mr. Goode was trespassing on the IEP meeting. Father's tone of voice was belligerent.

166. Mr. Davis tried to turn the discussion to the placement, services, and accommodations the District was recommending for Student. Father would not allow the discussion to turn to those subjects. Father attempted again to discuss teaching methodologies, which had been discussed at the prior meeting. Father again broached the issue of ESY classes, another issue that had been discussed at the previous meeting.

The District reiterated its position that Student did not demonstrate more regression during summer breaks than did typical children and therefore did not require ESY classes.

167. Mr. Davis was unsuccessful in his attempts to have Father engage in a discussion of placement, accommodations, and services for Student. Father became more confrontational and more insistent on discussing matters outside the IEP process. Because Father did not demonstrate any intention to engage in a discussion concerning the IEP and had no specific changes to offer, the District informed Father that it would stand on the IEP offer the District had sent Parents on April 10, 2013. The District then ended the IEP meeting. The District thereafter filed the instant complaint to validate its IEP offer to Student.

DISTRICT'S OFFER OF FAPE

168. The District made the following offer of FAPE. The offer included the five goals developed by the IEP team, two that addressed Student's deficits in written expression and three that addressed his needs in study skills. The goals had been discussed at length during IEP meetings and had been approved by Dr. Plotkin. The District offered Student specialized academic instruction for 45 minutes a day, with the remainder of Student's school day to be spent in general education classes. The District also offered the following accommodations to Student: state testing to be given in a small group setting; clarification of directions small group instructions extra time on assignments repetition of instruction and direction, and remediation; the use of graph paper, skill charts, and word problems to be read aloud; use of an electronic speller, graphic organizers, and access to computers; separate content and homework grades; monitoring of assignments and projects; and a multiplication chart to be available in math.

169. District staff testified on behalf of both the District and Parents. The witnesses included District administrators Mr. Davis, Mr. Goode, and Dr. Matthew Doyle and specialists Mr. Garcia and Ms. Palmatier. All of Student's teachers who taught him during sixth grade, with the exception of Student's physical education teacher, testified as well. This included Ms. O'Toole, Ms. Adams, Mr. Cameron, and Mr. LaPorte. These District witnesses unanimously opined that the District's IEP offer was reasonably calculated to provide Student with a meaningful educational benefit. All District witnesses agreed that Student had the capacity to do grade level work and did not require placement in special education classes for his academic subjects as this would remove him from general education. The teachers all agreed that Student belonged with typically developing peers for the majority of his day. Even Mr. LaPorte, in whose math and science classes Student had the most difficulty, agreed that Student was capable of passing the classes if he would just complete his work and turn it in. The District witnesses all agreed that Student did not have a reading comprehension deficit. They all agreed that Student's lack of progress was based on his lack of attention and focus, failure to complete and turn in work, and processing deficits. District witnesses all agreed that if Student completed his work and turned it in, he would be able to make at least passing grades. They all agreed that providing Student with specialized academic instruction by a special education teacher in the study skills class would help address those deficits. Student's average scores on his academic achievement assessment and on the Lindamood-Bell assessment corroborate the opinion of the District witnesses.

170. There was no level of insincerity or obfuscation in the testimony of any of Student's teachers or any of the District administrators. Mr. Garcia was especially persuasive. He became visually emotional while testifying because he was so overcome with distress that Parents doubted the sincerity of his recommendations.

171. District witnesses showed particular steadfast professionalism during each IEP meeting and during the hearing in spite of the sometimes confrontational nature of Father's interaction with them. Mr. Davis, who led the discussions at the IEP meetings, was particularly calm, cool, professional, and poised. He did not raise his voice. He did not sound impatient. He apologized constantly to Parents when Parents raised issues of not having received documents or responses to their concerns. Not once during the some 12 hours of recorded IEP meetings did any District witness speak or act in a discourteous manner.

172. Student did not present any witness, other than his Parents, who contradicted the District's position that the IEP, when taken as a whole, offered Student a FAPE. Unfortunately, Student was not able to obtain the presence of any of his independent assessors or of his advocate, Dr. Plotkin, to testify. However, on the audio recordings of the IEP meeting, Dr. Plotkin states several times that she was basically in agreement with the goals the District developed, once the District had incorporated her suggested modifications and additions. She informed Father that the District's goals incorporated most of his suggestions. In a discussion between Dr. Plotkin and Parents when District IEP team members were not present, she acknowledged that a judge would find Student's test scores supported the fact that he was progressing appropriately. Dr. Plotkin gave no indication at either of the IEP meetings in which she participated that she believed Student required placement outside of the general education environment for any of his academic subjects. She never suggested or advocated for an alternative placement to the District. Although she corresponded with District staff in developing Student's goals, there is no evidence that she made any placement suggestions outside of the IEP meetings.

TESTIMONY OF STUDENT'S PARENTS

173. Both of Student's parents testified at the hearing. It was readily apparent that in spite of Father's combative nature during the IEP meetings and in correspondence with the District, both he and Mother sincerely have Student's best interests in mind.

174. To support their position that the District should have included more goals for Student and should have developed another placement for him, Parents pointed to the fact that Student's California State Testing scores dropped in the areas of English Language Arts and Mathematics on the test administered in the spring of 2013. The problem with this evidence is that the test results were not provided to the District or to Parents until the beginning of the 2013-2014 school year, three months after the District made its IEP offer in this case. The District therefore had no knowledge that Student's scores had significantly dropped and no reason to believe they had dropped.

175. Parents also pointed out that Student's grades for the first month or two of the 2013-2014 school year continued to be as low as or lower than they were the previous school year. However, the District could not have been aware of what Student's grades would be in the fall of 2013 when it developed and offered its IEP in May 2013. Additionally, since Parents never consented to the implementation of any part of the District's proposed IEP, none of the goals or accommodations from that IEP was being implemented. It is illogical to argue that Student's grades continued to be depressed due to inadequacies in an IEP when no part of the IEP could be implemented. It is speculation as to how Student presently would be progressing in school had Parents consented to the implementation of the IEP.

176. Parents believed that Student was lost in general education classes. They believed that he was not able to understand grade level work and that if he is not given some type of other support, particularly in math, Student will never graduate high

school. Parents, however, discounted the fact that Student had scored in the average range in mathematics and in reading on the District's academic achievement test and on the independent evaluation Parents had obtained from Lindamood-Bell.

177. Parents also believed that the District had low expectations for Student because the District did not include seventh grade curriculum standards in Student's proposed goals. As discussed above, since Student was a general education student, he would be taught seventh grade curriculum once he began seventh grade in the normal course of business, irrespective of his stated goals.

178. Parents' concerns that the District had low expectations for Student contradicted Parents' belief that Student should have been placed in a special education math class. Placement in a special education class would be an indication that Student cannot do grade level work. The District's belief that Student is capable of doing grade level work and its offer of a general education placement with accommodations indicated that it in fact had high expectations for Student.

179. Mother is an educated, independent woman who takes her responsibilities to her children seriously. She wanted to be involved in all aspects of their education and of Student's IEP process. She believed that her participation in that process has been hindered by the District, primarily because the District would not translate all documents into Spanish for her. However, Mother was an active participant in the IEP process with the assistance of a District interpreter. She also actively participated by sending numerous emails to the District. The District always accepted the emails and had them translated for the benefit of its non-Spanish speaking staff.

180. Mother was Student's primary representative at this hearing. She did an excellent job of representing Student's interests. Her questioning of witnesses improved through the course of the hearing, indicating Mother's high level of intelligence; it was obvious that she was learning by observing how the District's attorney presented his

case. Mother utilized several documents written in English to question witnesses during the course of the hearing. These documents included the independent assessments Parents obtained from Ms. Priest and Lindamood-Bell.

181. Mother believed that Mr. Adams's assistive technology report was invalid because he did not administer enough testing instruments to Student. Mother did provide many examples of what other testing instruments Mr. Adams should have used.

182. Mother also believed that the District should have assigned Student to a band class as Student wanted. However, she did not explain how the District would be able to do this without removing Student from his specialized academic instruction in his study skills class or removing him from one of his state-mandated classes.

183. Mother also had significant concerns about Student's ability to self-advocate. In addition to her concerns about Student's ability to ask questions of teachers and to ask for help with classwork, Mother was concerned about Student's ability to defend himself against bullying, or to even discuss it with anyone. Mother recounted an incident at the end of the 2012-2013 school year where three boys assaulted Student and bullied him. Student went home and did not even initially tell Parents about the incident. Although the District responded immediately when notified of the incident by investigating it and disciplining the boys involved, Mother remained concerned that other incidents could happen without Student letting anyone know. Mother is correct that Student lacks strong self-advocacy skills.

184. Parents also pointed out what they considered to be procedural violations by the District of their right to participate in Student's IEP process. In addition to holding the April 10, 2013 IEP meeting without them, Parents contend that the District committed procedural violations by not having required IEP team members at all IEP meetings, by failing to translate documents into Spanish for Mother, by failing to provide correct notices of the IEP meetings, and by not reading the entire IEP notes at

the end of each IEP meeting. Parents also contend that the District predetermined its offer of placement to Student. The evidence does not support Parents' contentions.

185. Parents also contended that they were not permitted to participate meaningfully in Student's IEP process. They argued that the District did not consider their independent assessments and did not consider the goals they requested for Student or their suggested placements. Parents also contended that the District avoided discussing topics that Parents wanted discussed at the meetings. However, the audio recordings of the IEP meetings prove to the contrary. The recordings support the District's position that it considered Student's independent assessments, considered input from Parents and Student's advocate, and incorporated suggestions they made. The IEP meetings lasted over 12 hours. The District constantly asked for input and feedback from Parents. The IEP team spent literally hours discussing the District's assessments and the District's recommendations based upon the results of the assessments. The IEP team spent literally hours during the meetings discussing appropriate goals for Student. District staff spent more hours outside of the meetings corresponding with Parents and Dr. Plotkin about the goals. The fact that the District ultimately did not agree to all of Parents' suggestions does not signify that the District prevented Parents from participating in the process.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a special education administrative due process proceeding, the party seeking relief has the burden of proof. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this case, the District has brought the complaint and has the burden of proof.

OAH JURISDICTION

2. The Office of Administrative Hearings has authority in special education matters that pertain to the identification, assessment or educational placement of a child with a disability, or the provision of a FAPE . (Ed. Code, § 56501, subd. (a).) In this case, the District’s complaint raised issues that involve the appropriate provision of a FAPE for Student. OAH has the authority to hear and decide such issues. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029.)

FRAMEWORK FOR DECISION

3. Special education law derives from the Individuals with Disabilities Education Act (IDEA or the Act). (20 U.S.C. § 1400 et seq.) The IDEA is a comprehensive educational scheme that confers upon disabled students a substantive right to public education. (*Honig v. Doe* (1987) 484 U.S. 305, 310 [108 S.Ct. 592, 98 L.Ed.2d 686] (*Honig*)). The primary goal of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes public education and related services.” (20 U.S.C. § 1400(d)(1)(A); see *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947 (*Mercer Island*)).

4. Under the IDEA, a FAPE is defined as follows: special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the school standards of the state educational agency; (C) include an appropriate pre-school, elementary school, or secondary school in the state involved; and (D) are provided in conformity with the IEP required under

section 1414(d) of the Act. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006);⁴ Cal. Code Regs., tit. 5, § 3001, subd. (p).)

5. The term “special education” means specially designed instruction that meets the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031, subd. (a).) “Specially designed instruction” means the adaption, as appropriate to the needs of the disabled child, the content, methodology or delivery of instruction to address the unique needs of the child that result from the child’s disability. (34 C.F.R. § 300.39(b)(3).)

6. In 1982, the United States Supreme Court rendered the seminal and guiding decision in special education law. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*)). In the decision, the Supreme Court noted that the predecessor statute of the IDEA did not contain any substantive standard prescribing the level of education that a handicapped child must receive. (*Id.* at p. 189.) Instead, the Court determined that, in the Act, Congress established procedures to guarantee disabled children access and opportunities, not substantive outcomes. (*Id.* at p. 192.) If a school district acts in compliance with the procedures set forth in the IDEA, especially as regards the development of the child’s IEP, then the assumption is that the child’s program is appropriate. (*Id.* at p. 206.) Accordingly, the Court determined that an educational agency must provide the disabled child with a “basic floor of opportunity.” (*Id.* at p. 200.) The Court further noted that an appropriate education under the Act does not mean a “potential-maximizing education.” (*Id.* at p. 197, fn. 21.) Stated otherwise, the

⁴ Unless otherwise indicated, all subsequent references to the Code of Federal Regulations (C.F.R.) are to the 2006 version.

educational agency must offer a program that “confers some educational benefit upon the handicapped child.” (*Id.* at p. 200.)

7. To assist courts and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*Mercer Island, supra*, 592 F.3d at p. 947.) “First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” (*Rowley, supra*, 458 U.S. at pp. 206-207.) “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” (*Id.* at p. 207.)

8. In considering the substance of an educational plan, “(T)he test is whether the IEP, *taken in its entirety*, is reasonably calculated to enable the particular child to garner educational benefits.” (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30 (italics added) (*Lessard*); see also *T.Y. v. New York City Dept. of Educ.* (2nd Cir. 2009) 584 F.3d 412, 419 [judging the “IEP as a whole”].) Further, a court or tribunal must judge an IEP at the time of its development, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.ed 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*); *JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801 (*Douglas County*); *Tracy N. v. Department of Educ., Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) Here, under this “snapshot rule,” evidence of events that occurred after the May 28, 2013 IEP meeting are largely irrelevant in evaluating the appropriateness of the IEP which is the subject of this case.

9. An IEP must be both procedurally and substantively valid. A procedural violation constitutes a denial of FAPE only 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 their child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (hereafter *Target Range*).

10. The Ninth Circuit Court of Appeals has confirmed that not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033, fn.3; *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) The Ninth Circuit has also found that IDEA procedural error may be held harmless. (*M.L. v. Fed. Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 652

DETERMINATION OF ISSUE: DID THE DISTRICT'S MARCH 6, MARCH 13, MARCH 18, MAY 13, AND MAY 28, 2013 IEP OFFER STUDENT A FAPE IN THE LRE ?

PROCEDURES RELATING TO THE IEP PROCESS

11. Parents raised several affirmative defenses to the District's contention that its offer of FAPE was appropriate. The affirmative defenses included the following alleged procedural violations: 1) that the District predetermined its offer of FAPE and prevented Parents from fully participating in the IEP process; 2) that the District held the April 10, 2013 IEP meeting without Parents; 3) that the District failed to include all mandatory IEP team members at the IEP meetings; 4) that the District failed to translate the IEP document, meeting notes, and District assessments into Spanish for Mother; 5) that the District failed to provide proper notice of the IEP team meetings to Parents; and 6) that at the IEP meetings the District refused to discuss different reading intervention methodologies proposed by Parents.

Predetermination of the Offer of FAPE /Active Participation by Parents in the IEP Process

12. The District contends that Parents were active participants in the IEP process. Student contends that the District predetermined its offer of FAPE to him and failed to permit his parents to actively participate in the IEP process.

13. Legal conclusions 1 through 10 are incorporated herein by reference.

14. Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances where placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840 (*Deal*); *Bd. of Educ. of Township High School Dist. No. 211 v. Lindsey Ross* (7th Cir. 2007) 486 F.3d 267.)

15. Special education law places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Parental participation in the IEP process is also considered "(A)mong the most important procedural safeguards." (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882.)

16. An educational agency must therefore permit a child's parents "meaningful participation" in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132 (*Vashon Island*)). The standard for "meaningful participation" is an adequate opportunity to participate in the development of the IEP. Although a student's parents have a right to meaningful participation in the development of an IEP, a district "has no obligation to grant [a parent] a veto power over any individual IEP provision." (*Ibid.*) As the Ninth Circuit explained:

In discussing parents' participatory role in developing IEPs for their children, the [Supreme] Court observed that Congress, "apparently recognizing that [a] cooperative approach would not always produce a consensus between the school officials and the parents, and that in any dispute the school officials would have a natural advantage, ... incorporated an elaborate set of what it labeled 'procedural safeguards' to insure the full participation of the parents and proper resolution of substantive disagreements." We construe the Court's language as a recognition that, although the formulation of an IEP is ideally to be achieved by consensus among the interested parties at a properly conducted IEP meeting, sometimes such agreement will not be possible. If the parties reach a consensus, of course, the [IDEA] is satisfied and the IEP goes into effect. If not, the agency has the duty to formulate the plan to the best of its ability in accordance with information developed at [prior] meetings, but must afford the parents a due process hearing in regard to that plan.

(Id. at 1131-32 (quoting *Doe by Gonzales* (9th Cir. 1986) 793 F.2d 1470, 1490, *aff'd sub nom. Honig v. Doe* (1988) 484 U.S. 305, [108 S.Ct. 592, 98 L.Ed.2d 686].)

17. Parents have an adequate opportunity to participate in the IEP process when they are "present" at the IEP meeting. (34 C.F.R. § 300.322(a); Ed. Code, § 56341.5, subd. (a).) An adequate opportunity to participate can include a visit by the parent to the proposed placement. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 461.) An adequate opportunity to participate can include participation at the IEP

meeting by outside experts retained by the parents, and the incorporation of suggestions made by such experts into the IEP offer. (*D.S. v. Bayonne Board of Educ.* (3rd Cir. 2010) 602 F.3d 553, 565; see also *W.T. v. Board of Educ. of the School Dist. of New York City* (S.D.N.Y. 2010) 716 F.Supp.2d 270, 288 [reports from child's private school].) An adequate opportunity to participate can occur when parents engage in a discussion of the goals contained in the IEP. (*J.G. v. Briarcliff Manor Union Free School Dist.* (S.D.N.Y. 2010) 682 F.Supp.2d 387, 394.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools.* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036.)

18. Merely because the IEP team does not adopt the placement, services, or goals advanced by parents, does not mean that the parents have not had an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D.Hawaii 2006) 483 F.Supp.2d 1042, 1051.)

19. In the instant case, the weight of the evidence demonstrates that the District did not predetermine its offer of placement and services for Student and that Parents as well as all District IEP team members participated fully in the IEP discussions, with the exception of the April 10 IEP meeting. There is absolutely no evidence that District IEP team members formulated a "take it or leave it" IEP at the time the IEP process started on March 6, 2013. There is no evidence that the District's draft proposals were set in stone and no evidence that District policies were determining the type and amount of services that it would offer Student. Unlike the circumstances in the *Deal* case, Student presented no evidence that the District here had a policy of refusing to offer specific placements or services to students or of refusing to alter its draft

proposals. Nor has Student provided any evidence that high-level District officials were dictating placement decisions concerning special education students.

20. Unlike the school district in *Dea*, the District here provided many opportunities for Parents to provide their input. The District held five meetings attended by one or both of Student's parents. There were numerous emails between the parties concerning the scope of the IEP, goals for Student, and what his needs were. At the IEP meetings, Parents, Student's advocate, and the District spent literally over 12 hours discussing different aspects of Student's IEP. The parties spent hours discussing the proposed goals during the IEP meetings and District staff communicated with Parents and Student's advocate by email outside of the meetings to develop the goals. The District significantly modified the goals based on those discussions. The District also added an additional goal based upon input from Parents and Student's advocate. The District attempted to resolve the concern Parents had that Student wanted to take band, but neither party had a concrete suggestion that would still retain Student in his mandatory general education classes and give him the specialized academic instruction he required in the special education study skills class. The District discussed placement for Student and why it strenuously believed that general education classes with appropriate goals and accommodations, along with the study skills class, was the LRE for Student. The District's final May 28, 2013 IEP offer was made after five meetings lasting over 12 hours, where all team members were present. Student's IEP team consisted of numerous individuals, including his teachers and many of the District staff who had assessed him. Parents and Student's advocate were actively engaged in discussing their points of view with the District team members.

21. The audio recordings of the IEP meetings and the correspondence between the parties solidly support the District's position that it did not predetermine Student's IEP and that Parents were active participants in the process. It was not until

after almost 13 hours of face to face IEP meetings and dozens of emails that the District finally determined that the IEP process could go no further because Parents would not allow the discussion to focus on Student's new IEP. Parents have many issues with Student's last IEP and with contentions that it was not implemented. However, their persistence in discussing issues outside of the IEP process rather than in other meetings offered by the District was what interfered with the joint duty to develop an IEP for Student, not any action by the District to foreclose participation by Parents.

22. Although Parents did not agree to the District's IEP offer, their disagreement by itself does not equate to a denial of their rights to participate in the IEP process. The District has met its burden of proof that it did not predetermine the offer of FAPE and that Parents were not significantly prevented from participating in the process to develop an IEP for Student.

Holding the April 10, 2013 IEP Team Meeting Without Parents

23. The District contends that Parents' participation throughout the IEP process indicates that their right to participate was not hampered by the fact that it held one of six meetings without them. Student contends that the District significantly impeded the right of his parents to participate in the process to develop his IEP by holding an IEP meeting on April 10, 2013, even though Parents had asked to change the date and did not appear for the meeting.

24. Legal Conclusions 1 through 10 and 14 through 18 are incorporated herein by reference.

25. The IDEA and state law explicitly require that parents be part of the IEP team, which is charged with developing and implementing a student's IEP. ((20 U.S.C. §§ 1401(14), 1414(d)(1)(B)(i); Ed. Code, § 56342.5.) As stated above, the United States Supreme Court in *Rowley* made it clear that participation by parents was of paramount importance. (*Rowley, supra*, 458 U.S. at pp. 205-206.)

26. A school district must take steps to ensure that one or both parents of a disabled child are present at the IEP meeting by “(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place.” (34 C.F.R. § 300.322(a).) “If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls” (34 C.F.R. § 300.322(c).) “A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place” (34 C.F.R. § 300.322(d).)

27. The Ninth Circuit has found that school districts must make every attempt to secure the presence of a student’s parents at IEP meetings. In *Shapiro v. Paradise Valley Unified School Dist.* (9th Cir. 2003) 317 F.3d 1072, 1077, *superseded on other grounds by* 20 U.S.C. § 1414(d)(1)(B) (*Shapiro*), the Ninth Circuit noted that “[t]he importance of parental participation in the IEP process is evident.” In *Shapiro*, the school district refused to reschedule the child’s IEP meeting to a date requested by the parent who was not available on the date convenient to the district. The court in *Shapiro* held that the failure to reschedule the meeting constituted a procedural violation that amounted to a denial of FAPE. (*Id.* at p. 1075.) The court held that the fact that the district subsequently sent the IEP to the parent for approval did not cure the violation. (*Id.* at p. 1078.)

28. The Ninth Circuit recently reiterated its ruling in *Shapiro* in the case of *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038 (*Doug C.*). There, the school district was faced with either missing the statutory deadline to hold the child’s IEP meeting or holding the meeting without the child’s father who had cancelled a few meetings and then had informed the district that he was ill and could not attend the

latest scheduled meeting. The Ninth Circuit found that it was more important to ensure the parent's presence at the IEP meeting than it was to meet the deadline to hold the meeting, because the former was the procedural requirement that most benefitted the Student. (*Id.* at pp. 1043-1047.) The Ninth Circuit further found that the fact that the school district held another IEP meeting some six months after the first, this time with the parent in attendance, did not cure the procedural violation. By the time the district convened the second meeting, the child's IEP had already been completed and adopted by the district. (*Id.* at p. 1046.)

29. In the instant case, Parents participated fully in the first three IEP meetings convened by the District. There is no evidence that Parents unnecessarily delayed any of the meetings or that they failed to attend a meeting that had been scheduled and agreed to by all parties. However, after the District began communicating with Parents in order to set a date in April 2013 for Student's fourth IEP meeting, Parents did not initially agree to any dates. Parents protested the fact that the District would only schedule the meeting for a two-hour block of time. Parents also protested the fact that all District staff who had assessed Student would not be at the meeting. When Parents would not agree to meet on one of the several dates suggested by the District, the District chose one of the dates and sent a notice to Parents setting April 10, 2013, for the fourth IEP meeting. Mr. Garcia then emailed Parents and the other IEP team members that he would only be able to attend the second half of the meeting due to prior commitments. Parents were not happy with this. On April 9, 2013, after normal business hours, Parents sent an email in Spanish to the District requesting a change in the meeting date. Parents did not inform the District that they had a conflicting prior commitment on that date and they did not state that they would not attend the April 10 IEP meeting.

30. The District did not believe that Parents would miss the April 10 IEP meeting. The District arranged to have its interpreter attend in order to translate for Mother. The meeting was scheduled to begin at 9:00 a.m. The District waited 15 minutes for Parents. When Parents failed to appear for the meeting, the District convened it without them. The District did not attempt to call Parents. It did not immediately disband the meeting in order to reschedule it. Instead, the District IEP members finalized IEP issues and developed an offer of FAPE for Student. Parents arrived at Student's school after the District had finished the meeting. The District did not suggest reconvening the meeting now that Parents were present. The District sent Parents a copy of the IEP offer later that day.

31. The District argues that because most of the IEP issues had been discussed with Parents and Student's advocate at the three previous IEP meetings, the failure to include Parents at the fourth meeting was harmless error. The District argues that Parents' full involvement in the IEP process through their many emails and through almost 10 hours of IEP meetings over the course of the three first meetings demonstrates that Parents' right to participate in the IEP process was not significantly impeded. However, the District's position is not persuasive in light of the Ninth Circuit's decisions in *Shapiro* and *Doug C.* The District did not attempt to communicate with Parents to determine if they were coming to the meeting or no longer wanted to participate. It did not cancel the meeting and attempt to reschedule it. It did not acknowledge that Parents had requested that the meeting be rescheduled. Had the IEP process ended with the April 10, 2013 meeting, the District's decision to hold the meeting without Parents would have fallen squarely within the rulings in *Shapiro* and *Doug C.* and would have constituted an impermissible procedural violation.

32. However, Student's IEP process did not end on April 10. Parents requested another meeting to continue to discuss Student's IEP. The District agreed to continue

discussions. The District properly sent notices for another IEP meeting. It convened the meeting and proceeded as if it had not held the meeting on April 10. Rather than just using the May 13, 2013 IEP meeting as a way of informing Parents of what the District had decided, the District attempted to start the discussion from scratch on issues that had been discussed outside of Parent's presence. The District attempted to fully discuss Student's placement, services, and accommodations. Parents, however, would not permit the discussion to proceed. The District attempted to move the discussion forward for two hours, but Parents were not intent on discussing the IEP issues. After two hours and despite many attempts by the District, the meeting ended without the District being able to fully discuss Student's placement, accommodations, and services. All of those issues had been touched upon during the previous meetings, but the District had wanted to open discussion further in order to obtain more input from Parents. Parents simply would not permit the District to do so. The District tried again on May 28 to address all remaining IEP issues with Father. He would not permit the discussion to proceed, but instead insisted on returning to issues that had been discussed and re-discussed at prior meetings. It was only after Father remained confrontational and would not address IEP issues that Mr. Davis finally ended the IEP process. The situation in this case does not parallel the facts of *Shapiro*, where the school district merely sent the parents a completed IEP. Nor does it parallel the situation in *Doug C.*, where the District actually completed and then implemented the IEP it had developed without the parent before convening the second IEP meeting six months later. Here, Parents were given the opportunity at two subsequent IEP meetings to be active participants in the IEP process and discuss and give input regarding Student's educational program. They chose not to avail themselves of the opportunities. At some point, as the court stated in *Vashon Island, supra* at pp. 1131-1132, it is a school district's responsibility to make a final offer of FAPE. If the student's parents do not consent to the offer, the District's

option is to file for due process to seek a determination as to whether its offer is legally adequate. That is exactly what the District did here.

33. The District's decision to proceed with the IEP meeting on April 10, 2013, in these circumstances, was harmless error because the District did not complete or implement the IEP as of that date. The District, in effect, disavowed the IEP offer of April 10 and instead treated that meeting as if it had not occurred. The District's intent was to re-involve Parents in the process. The District has proven by a preponderance of the evidence that it did not significantly impede the ability of Parents to participate in the development of Student's IEP when it held a meeting without them on April 10, 2013.

Mandatory IEP Team Members

34. The District contends that it met all mandatory requirements when it determined who would be present from the District at all of the IEP meetings in question in this case. Student contends that the District failed to properly constitute its IEP meetings because: 1) Student's present special education teacher was not present at all the meetings; 2) Student's general education teachers were not present for full meetings; 3) all assessors who had assessed Student did not attend the meetings; 4) Mr. Garcia was not scheduled to be present at all meetings; and 5) the District had too many District administrators in attendance at each meeting.

35. Legal Conclusions 1 through 10, 14 through 18, and 25 through 27 are incorporated herein by reference.

36. Under the law, an IEP team must be composed of the following persons: 1) the parents of a child with a disability; 2) not less than one regular education teacher of the child; 3) not less than one special education teacher of the child; 4) a representative of the educational agency who is qualified to provide or supervise the provision of specially designed instruction for the child, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of resources of

the agency; 5) an individual who can interpret the instructional implications of evaluation results; and 6) at the discretion of the parents or educational agency, other individuals who have knowledge or special expertise regarding the child. The determination of the knowledge or special expertise of any individual described in the last section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

37. Where a school district suspects a child may have a learning disability, as was the case with Student, the law also requires that one member of the IEP team be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (34 C.F.R. §§ 300.308 and 300.310; Ed. Code, § 56341, subd. (c).)

38. In the case of *R.B. v. Napa Valley Unified School Dist.* (9th Cir, 2007) 496 F.3d 932 (*R.B.*), the Ninth Circuit determined that the present general education teacher of a student is not required to be present at an IEP meeting. Rather, it is only necessary for a general education teacher who has instructed the child in the past or who may instruct the child in the future to be present. (*Id.* at pp. 938-940.) The Ninth Circuit also addressed the issue of which special education teacher of a student was required to participate in the IEP meetings. After reviewing the statutory language, the Ninth Circuit determined that under both the federal IDEA and the California Education Code, a special education teacher or special education provider who has actually provided instruction or services to the student must be a member of the IEP team. (*Id.* at pp. 940-942.) Where a school district has failed to include the necessary IEP team members, the facts of the case are reviewed to determine if the omission of a required IEP team member was a procedural violation or merely amounted to harmless error. For example, in the *R.B.* case the Ninth Circuit determined that it was harmless error for the school

district to have failed to include a special education teacher or special education provider who had previously instructed the student or provided services to her because it upheld the finding that R.B. was not eligible for special education services. (*Id.* at p. 942.)

39. In the present case, Student maintains that the District committed a procedural violation because his then present special education teacher Kathy Adams only stayed for a limited amount of time at a couple of his IEP meetings. However, Ms. O'Toole, Student's special education teacher the prior semester, was present at each of Student's IEP meetings. Her presence complied with the Ninth Circuit's determination that any special education teacher or provider of a student, even if not presently instructing the student, is all that is required to meet both federal and California statutory requirements. Ms. Adams was not required to participate in Student's IEP meetings and her absence therefore did not amount to a procedural violation.

40. Student also contends the District committed a procedural violation because Mr. Cameron and Mr. LaPorte, Student's general education teachers, were not present for every minute of all IEP meetings held for Student. Mr. LaPorte and Mr. Cameron arrived about a half hour late to the first IEP meeting held on March 6, 2013. At future meetings, either Mr. Cameron or Mr. LaPorte, or both, were present the vast majority of each meeting. As stated above in Legal Conclusion 25, and as interpreted by the Ninth Circuit in the *R.B.* case, only one of Student's general education teachers was required to be at his IEP meetings. The fact that Mr. Cameron and Mr. LaPorte rotated through the meetings is therefore not a procedural violation of the IDEA. Those two teachers did arrive late for the meeting on March 6. There was no general education teacher present for the first half hour or so of the meeting. However, there is no evidence that their absence for such a short period of time interfered with the right of Student to receive a FAPE or significantly impeded the right of Parents to participate in

the IEP process. The first part of this IEP meeting was taken up with Father's questioning of Mr. Goode, after which Mr. Garcia began discussing his assessment. Ms. Adams then gave input regarding Student's present levels of performance in her class. When Mr. Cameron and Mr. LaPorte arrived, they were able to give input regarding Student's performance in their classes. One of the general education teachers was present for the majority of the subsequent meetings. There is no evidence that their minor absences resulted in the omission of any information relevant to Student's IEP or resulted in any loss of education to him. The very minor absences of either Mr. Cameron or Mr. LaPorte amounted to harmless error and therefore did not constitute a procedural violation of the IDEA.

41. Student further contends that the District should have included Dr. Garner at the IEP meetings when Parents requested her presence because she was a required IEP member. Dr. Garner administered the Test of Written Language to Student. However, as stated in Legal Conclusion 25, neither federal nor state statutes require that the actual assessor attend a student's IEP meetings. The only requirement is that an individual capable of interpreting the instructional implications of the assessment be present. Mr. Garcia, the school psychologist who headed the team administering Student's triennial evaluation, was present at almost every IEP meeting. He reviewed his assessment and the portion completed by Dr. Garner at several of the meetings. There is no evidence in the record that Mr. Garcia was not qualified to review Dr. Garner's assessment or that he failed to do so. Dr. Garner was not a required member of Student's IEP team and thus her absence did not amount to a procedural violation.

42. Student also contends that Mr. Adams, who assessed Student in the area of assistive technology, was a required member of the IEP team. As stated above in Legal Conclusion 25, the law only requires that an individual who can interpret the educational implications of an assessment be present as a member of the IEP team. In

this case, both Mr. Davis, who has a Master's degree in Educational Technology, and Ms. O'Toole, who has training in assistive technology, were qualified to interpret the educational implications of Mr. Adams's assessment. Mother had specific questions for Mr. Adams about the assessment process that she believed only he could answer. Mr. Davis offered to make Mr. Adams available by phone, through email correspondence, or, potentially, by holding the IEP meeting in question on a future date. Parents refused the offer. The District was not required to have Mr. Adams present but did everything it could to try to have Parents' specific questions answered. The fact that Parents did not get the answers they wanted is attributable to their own actions and not to the District. The District did not commit any procedural violation of the rights of Parents by not having Mr. Adams attend the IEP meeting as Parents requested.

43. Student further contends that Anne Green, then a District Coordinator of English language services, should have attended the IEP meetings because Student was designated an English language learner. However, Ms. Green has never instructed Student. She has not even met him. Her position does not come within the list of mandatory IEP members. Her presence was therefore not required.

44. Student also contends that Mr. Garcia should have been present at all times during each of the IEP meetings. Mr. Garcia was not present for the IEP meeting held on April 10 and he was not present at the last IEP meeting held on May 28. However, Mr. Garcia had spent much of the first three IEP meetings, which lasted a total of almost 10 hours, discussing the implications of his assessment and his recommendations for Student. The IEP team, including Student's parents, was well aware by that time of the results of his assessment and what Mr. Garcia believed to be Student's unique needs based on those results. There is no evidence that Parents were not able to question him in length about the assessment, or that they had questions for Mr. Garcia that remained unanswered because he was not present at each meeting. To

the extent that Mr. Garcia was present at the IEP meetings as an individual who was qualified to conduct individual diagnostic examinations of children who were suspected of having a Specific Learning Disability, the law, as stated in Legal Conclusion 26, only requires the participation of either a school psychologist, a speech-language pathologist, or remedial reading teacher. Ms. O'Toole, who is qualified as a resource specialist teacher to teach remedial reading, was present at each of the IEP meetings. Therefore, no procedural violation occurred because Mr. Garcia was not present at each of Student's IEP meetings.

45. Finally, Student contends that the District violated the procedural rights of his Parents to participate in the IEP process because the District had at least three administrators present at each IEP meeting. Student's parents were so upset about the District inviting three administrators to the IEP meetings that at one meeting they called the police, ostensibly to have the excess administrators removed as "trespassers" at the meeting. To the extent that Student counts Ms. O'Toole as one of the three, Student is incorrect. Ms. O'Toole was present as his former special education teacher. However, even if she were present solely as a District administrator, there is no restriction on the number of District administrators who are permitted at IEP meetings. Parents and school districts are entitled to invite to an IEP meeting anyone either believes will have pertinent knowledge or information concerning the student or his IEP needs. Each is entitled to make the decision as to whether the person invited has that knowledge; the other party does not have a right to contest the qualifications of the person invited to attend. The District was entitled to invite the administrators to the meeting. The fact that Parents preferred that fewer administrators attend does not amount to a procedural violation of their rights under the IDEA or state education law.

Translation of the IEP Documents and the Assessments into Spanish

46. The District contends that it was not legally required to translate documents from English into Mother's native language. The District alternatively asserts that even if it were obligated to translate the documents, Mother's ability to participate in the process was not significantly impeded because Student's father is fluent in written and spoken English and was able to translate the documents for Mother. The District points to the fact that Parents communicated with the District through hundreds of emails, most of which were in English, and that Mother participated fully in Student's IEP both at the meetings and through the correspondence. Student contends that Mother was disenfranchised by the IEP process because the District did not translate assessments or the IEP document into Spanish for her. Student therefore alleges that his mother's right to participate in his IEP process was significantly impeded.

47. Legal Conclusions 1 through 10, 14 through 18, and 25 through 27 are hereby incorporated by reference.

48. The IDEA and the Code of Federal Regulations do not require that a school district translate assessments or IEP documents from English to a parent's native language. Federal and state education law only require that school districts take any action necessary to ensure that the parent or guardian understands the IEP team meeting proceedings, including arranging for an interpreter if necessary. (34 C.F.R. §§ 300.9, 300.322(e); Ed. Code, § 56341.5, subd. (i).) The Office of Special Education Programs of the United States Department of Education has stated that the IDEA and corresponding Code of Regulations do not require translations of IEP documents, although providing such translations may help demonstrate in some circumstances that non-English speaking parents have been fully informed of the services the IEP offers. (*Letter to Boswell* (OSEP 2007) 49 IDELR 196; *City of Chicago School District 299* (Ill State

Educational Agency 2010) 110 LRP 36565; *In re: Student with a Disability* (NM State Educational Agency 2011) 111 LRP 39015.)

49. In this case, Mother does not speak or understand spoken English, does not write in English, but acknowledged that she reads English. Although the District had an interpreter present at each of Student's six IEP meetings to translate all discussions and documents orally into Spanish for Mother, it did not provide Spanish translations of the documents as she requested. Student cites to Title 5 of the California Code of Regulations, section 3040, subdivision (b), in support of his contention that the District was required to provide the translations, at least of the IEP document. However, as the District points out in its brief, this regulation is more expansive than the Education Code section on which it is based and more expansive than federal law. This expansion of federal and state statutes is not permitted by the Education Code itself, which specifically states that it is not the intent of the California Legislature to set higher standards in special education matters than those established by Congress in the IDEA. (Ed. Code § 56000, subd. (e).)⁵ Neither federal nor state statutes require that assessments or IEP documents be translated.

50. Even assuming that the requirement existed, the District's failure to translate the documents did not amount to a procedural violation. As required under federal and state law, the District provided a Spanish interpreter at the IEP meetings for Mother. The interpreter translated the assessments and the IEP discussions for Mother. She also occasionally translated the IEP notes when they were available at the end of the meetings.

⁵ In its closing brief, the District inadvertently cited this section as Education Code section 510000, subdivision (e).

51. During an IEP meeting, Mother acknowledged that she was able to read English. Mother also demonstrated a clear understanding of the documents that were only provided in English, such as the independent educational evaluations Parents funded for Student from Ms. Priest and Lindamood-Bell. Mother was able to use them and refer to them during the IEP meetings and during Mother's examination of witnesses at hearing. Additionally, irrespective of Mother's ability to read at least some English, Father is fluent in written as well as spoken English and can, and did, translate documents and emails into Spanish for Mother.

52. It was apparent during the hearing that Mother considers herself an independent and autonomous person who clearly did not want to be dependent on Father, or anyone, to understand all the documents relating to Student's education. However, the legal standard in determining whether a school district has committed a procedural violation is whether its actions have *seriously impeded* a parent's ability to participate in the IEP process. Here, Mother actively participated in the IEP meetings, sent tens, if not hundreds of emails to the District discussing Student's education and IEP process, and very ably represented Student at this hearing, including referencing the documents in the case. While Mother's participation may have been hindered a bit by the lack of translation of the documents, the District has met its burden of persuasion that her participation was not seriously impeded. The failure of the District to translate the assessments and the IEP document for Mother was not a procedural violation of the IDEA.

IEP Meeting Notices

53. The District contends that it was not required to identify by name all participants on the IEP meeting notices. It also contends that any procedural violations that occurred with regard to the notices were harmless error and did not significantly impede the ability of Parents to participate in the process of developing Student's IEP.

Parents contend that the District committed procedural violations of their right to participate in the IEP process because the District did not send them a formal written IEP notice for each of the six IEP meetings held in developing Student's IEP, did not identify all District staff by name, and failed to include Mother's name as an invited participant on the Spanish translation of the notice for the May 28, 2013 IEP meeting.

54. Legal Conclusions 1 through 10, 14 through 18, and 25 through 27 are incorporated herein by reference.

55. School districts are required to notify parents in advance of any IEP meetings they convene. The notice must be sent early enough so that parents have an opportunity to attend. The notice must also indicate, in pertinent part, the purpose, time, location of the meeting, and who will be in attendance. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.322(b)(1)(i); Ed. Code, § 56341.5, subd. (c).) However, the district's notice is not required to identify meeting participants by name, as long as the notice identifies the individuals by position. (*Letter to Livingston* (OSEP 1994) 21 IDELR 1060; *Kevin Fitzgerald v. Fairfax County School Bd.* (E.D.Va 2008) 556 F.Supp.2d 543.)

56. A school district's failure to provide appropriate notice of an IEP meeting is not a denial of FAPE if the parents are able to participate meaningfully in the IEP process despite the violation. (*See, e.g., Bruno v. Greenwich Bd. of Educ.* (D. Conn. 2006) 45 IDELR 14 [holding that a district did not deny FAPE to a student who had reached the age of majority by failing to provide him notice of IEP meetings, as the student received the notices sent to his parent and attended all IEP meetings]; and *Carroll County Pub. Sch.*, (VA State Ed. Agency 1995) 23 IDELR 157 [because the parents received verbal notice and participated in the IEP meeting, the district's failure to provide written notice was a technical violation that did not amount to a denial of FAPE].)

57. The District initiated the IEP meeting process in this case by sending a formal notification to Parents on February 27, 2013, noticing the meeting for March 6,

2013. The notice contained a list of all District personnel who would attend the meeting. Parents signed the notice and returned it to the District. Parents attended the meeting as scheduled and participated fully in the meeting, which lasted almost four hours. The IEP team did not finalize an IEP for Student. Therefore, at the end of the March 6 IEP meeting, the parties discussed the date and time for a continued meeting. The IEP team agreed to meet the following week. The District agreed to coordinate the attendance of everyone, including Dr. Plotkin, by email. Parents agreed to the procedure. The District did not send out a formal meeting notice. However, Parents received emails concerning the meeting and there was no confusion as to when and at what time the meeting would take place. Parents, their advocate, and the necessary District staff attended the next meeting on March 13, 2013.

58. The IEP team was not able to finalize Student's IEP on March 13. The parties agreed therefore to meet the following week, on March 18. The District and Parents corresponded by email to confirm the date and time of the meeting as well as the District staff who would attend. Parents and their advocate attended and participated in the March 18 meeting. The IEP team was still unable to finalize Student's IEP. The District thereafter sent emails to Parents to try to arrange a follow-up meeting. The District sent a notice of IEP meeting to Parents on April 5, 2013, scheduling a meeting for April 10, 2013. The notice contained all necessary provisions. As discussed above, Parents did not attend the April 10, 2013 IEP meeting.

59. Since they were not present at the meeting held on April 10, Parents asked for the District to schedule another follow-up IEP meeting. The District agreed. It ultimately sent a notice of meeting to Parents on May 9, 2013, scheduling the meeting for May 13, 2013. The notice met all procedural requirements. Parents attended and participated in the May 13 IEP meeting.

60. It is clear that the failure of the District to send formal meeting notices to Parents on two occasions did not in any way impede Parents' ability to participate in their son's IEP process. The District discussed the date and time of subsequent meetings at the end of each meeting. The parties discussed who would be participating. The District confirmed the meetings and the meeting participants by email. Parents and Student's advocate attended the meetings and participated in the discussions. Although the District did not follow the letter of the law by failing to provide formal notice of all IEP meetings, its technical violations of failing to send meeting notices for the March 13 and March 18, 2013 IEP meetings did not deny Student a FAPE or significantly impede the ability of Parents to participate in the IEP process, and thus were harmless error.

61. The IEP team was not able to finalize Student's IEP at the May 13 IEP meeting. The parties agreed to another IEP team meeting would need to be convened. The District sent a notice of IEP meeting to Parents on May 20, 2013, noticing the meeting for May 28. The first notice sent by the District was in English and was addressed to both of Student's parents. It met all statutory requirements. The District also sent a copy of the notice in Spanish to Parents. However, the District inadvertently noted only Father's name in the salutation. Although Mother had been named in the English notice of meeting, Parents inexplicably interpreted the omission of Mother's name on the Spanish version to mean that the District was not inviting her to the meeting. Parents' reaction was not warranted. The District had always noticed both parents and Mother, had, in fact, been noticed on the English version of the notification.

62. Only Father appeared for the May 28 IEP meeting. However, a school district is not required to assure the participation of both of a student's parents at all IEP meetings. ("Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting" (34 C.F.R. §

300.322(a).) Therefore, even assuming the District only invited Father, it was not obligated to ensure that both parents were present.

63. This was not the case however. The District's omission of Mother's name was unintentional. The District assured Father of this at the beginning of the May 28 IEP meeting. The District indicated it would delay or reschedule the meeting so that Mother could be there. Father instead proceeded with the meeting, indicating Mother would come by later. The District did not significantly impede Mother's right to participate in the IEP process by inadvertently omitting her name from the Spanish version of the May 20 IEP meeting notice.

Failure to Discuss Methodologies Proposed by Parents

64. The District contends that it is not obligated to discuss the specific instructional methodologies it uses in class at IEP meetings. Student generally contends that the District violated Parents' right to participate in the development of Student's IEP because it failed to discuss the reading methodologies Mother suggested during the IEP meetings. Student also suggests that his right to a FAPE was impeded because the District did not use an appropriate reading methodology with him.

65. Legal Conclusions 1 through 10, 14 through 18, and 25 through 27 are incorporated herein by reference.

66. The *Rowley* opinion established that as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at pp. 207-208.) Subsequent case law has followed this holding in disputes regarding the choice among methodologies for educating children with autism. (See, e.g., *Adams, supra*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Comm.* (1st Cir. 2004) 361 F.3d 80, 84.) As the First Circuit Court of Appeals noted, the *Rowley* standard recognizes that courts are ill equipped to second-guess reasonable choices that school districts

have made among appropriate instructional methods. (*Ibid.*) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses his or her basic needs, courts should be loathe to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs." (*Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992 (citing *Rowley, supra*, 458 U.S. at p. 207-208).)

67. The reauthorized IDEA does not mandate that a district use a particular methodology. For example, courts have consistently rejected the proposition that an Applied Behavior Analysis-only program is the only effective method of instruction for autistic students. (*Deal v. Hamilton County Dept. of Educ.* (E.D.Tenn. 2006) 2006 U.S. Dist. Lexis 27570, pp. 51-57; 46 IDELR 45, 106 LRP 29290, [which provides a comprehensive summary of decisions discussing the matter].) Rather, courts have determined that the most important issue is whether the proposed instructional method meets the student's needs and whether the student may make adequate educational progress. (*Id.* at pp. 65-68.)

68. The Ninth Circuit, in *Mercer Island, supra*, 592 F.3d at p. 952, reiterated its position that a district is not necessarily required to disclose its methodologies. The Court found that it is not necessary for a school district to specify a methodology for each student with an IEP if specificity is not necessary to enable the student to receive an appropriate education. In finding that the district had not committed a procedural violation of the Act by failing to specify the teaching methodologies it intended to use, the court stated, "We accord deference to the District's determination and the ALJ's finding that K.L.'s teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective." (*Ibid.*)

69. First, with regard to Student's contention that the District absolutely refused to discuss methodologies with Parents, such is not the case. Mother broached

the subject at the May 13 IEP meeting and Mr. Davis discussed the issue with her. The District did not refuse to discuss methodologies although it was not required to do so.

70. With regard to Student's implication that he required a reading methodology other than those used by the District in his classroom, there is no evidence in support of that contention. Mother suggested two methodologies for consideration by the IEP team: Slingerland and Wilson Reading. Mr. Davis explained to her that Student did not require either intervention because he was already able to comprehend what he read. Mr. Davis also explained that he believed that using either methodology would hinder rather than help Student because Student already was able to do what the methodologies taught. Additionally, using either program would involve removing Student from his general education classes and would take him out of his LRE. Student provided no evidence that he required a specific reading intervention program or that either of the two suggested by Mother were necessary for him to receive a FAPE.

71. The District therefore did not deny Student a FAPE by either refusing to discuss reading methodologies with Parents or refusing to implement one of the programs Parents suggested.

SUBSTANCE OF THE DISTRICT'S OFFER OF FAPE

72. The District's offer of FAPE consisted of placement for Student in general education classes for the majority of his school day and 45 minutes a day of specialized academic instruction. The District proposed five goals for Student: two to address his deficits in written expression and three to address his deficits in attention, organization, and completion of tasks. The District also proposed several accommodations for Student to assist him in accessing the curriculum. The District contends that its IEP offer substantively offered Student a FAPE.

73. Student contended that the District's offer failed in many respects. He contended that the District goals were inadequate and that the proposed placement did

not meet his needs. Student contended that the proposed IEP did not address his needs as an English language learner. Student also contended that the District should have offered him speech services and goals and additional assistive technology. Student believed that the District did not provide him with adequate related services because it failed to offer him speech and failed to provide adequate assistive technology to assist Student with accessing his education. Finally, Student believed that the District should have offered him ESYservices.

74. 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 Dist.* (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 LRE. (*Ibid.*; 20 U. S.C. § 1401(9).) The IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207. See also *Miller v. Bd. of Education of the Albuquerque Public Schools* (D.N.M. 2006), 455 F.Supp.2d 1286, 1307-1309; *aff'd on other grounds, Miller v. Bd. of Education of the Albuquerque Public Schools* (10th Cir. 2009) 565 F.3d 1232) (hereafter *Miller*.)

75. As discussed in more detail below, the District's proposed IEP, when viewed as a whole, met the standards described in Legal Conclusions 74 and 75 above. The District's triennial assessment provided insight into Student's deficits. The

assessment indicated that Student continued to have deficits in attention, organization, and short-term memory. The assessment also pointed to Student's discrepancy between his abilities in written expression and his present achievement in that area. The assessment demonstrated that in spite of Student's low grades, he was, in fact, retaining information because his achievement scores in all academic areas were in the average range, with the exception of written expression. With the exception of Student's inexplicably low reading comprehension score on Ms. Priest's assessment, Student's reading comprehension scores on all other assessments were in the average to above average range. This included the independent assessment Parents obtained from Lindamood-Bell. Student's IEP team reviewed the assessments, had lengthy discussions on his performance at school, and reviewed grades and testing information presently available to the team. The District team members reviewed Student's strengths and weaknesses. Parents believe the District team members had low expectations for Student. The evidence demonstrates the contrary: the District administrators and all of Student's teachers believe that he has the capacity to function and progress in the general education environment if provided with sufficient goals, accommodations and supports. The District's IEP was designed to offer Student the opportunity to advance in the curriculum while remaining primarily in the general education environment.

IEP Goals

76. The District contends that it developed adequate goals for Student in the area of written expression and study skills and that these goals addressed all of Student's deficits that were impacting his ability to advance in the curriculum. Student contends that the goals are inadequate because he has deficits in math, reading comprehension and self-advocacy skills and the District should therefore have developed goals in those areas as his parents requested. Student believes that the goals in written expression should have expressly included seventh grade curriculum

standards and not just sixth grade standards. Student also contends the District's emphasis on study skills goals is misplaced. Finally, Student believes that the District should have formulated goals in the area of speech and language for him (and, presumably, offered him speech therapy) because he believes he has a speech deficit.

77. Federal and state special education law require generally that the IEP developed for a child with special needs contain the present levels of the child's educational performance and measurable annual goals, including benchmarks or short-term objectives, related to the child's needs. (20 U.S.C. § 1414 (d)(1)(A)(ii); Ed. Code, § 56345, subd. (a).) The purpose of goals and measurable objectives is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) The IEP team also must consider special factors, such as whether the child needs assistive technology devices and services. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2); Ed. Code, § 56341.1, subd. (b).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

78. Legal Conclusions 1 through 10, 74, and 75 are incorporated herein by reference.

79. The District in this case developed Student's goals based upon the results of his assessments. The District considered past assessments it had done of Student and considered the independent assessments funded by Parents. The test results consistently demonstrated that Student's deficits were in attention, organization, short-

term memory, and most recently, in written expression. The five goals developed by the District, as modified through the input primarily of Dr. Plotkin, Student's advocate, were specifically designed to address each of those needs. The writing goal was developed after hours of discussing Student's difficulties in class. Mr. Cameron, Student's language arts and social studies teacher, was emphatic that Student was capable of doing more than adequate work when he focused on what he was doing. Student had demonstrated this to Mr. Cameron in the work Student produced in class and after school. Student's grades were being negatively affected by his lack of attention to his homework and by not utilizing and turning in his class notes. The three study skills goals the District developed were designed in conjunction with the written expression goals to assist Student in focusing on his work. The written expression goals were designed to meet Student's unique needs.

80. Student believes that his written expression goals should have included seventh grade curriculum standards in addition to standards for sixth grade since he would be entering seventh grade during the period covered by the proposed IEP. However, the District's evidence persuasively shows that the goals were based upon Student's abilities, level of achievement, and projected performance over the year covered by the goals. There was no evidence that Student was operating at a seventh grade level at the time the goals were developed. Most importantly, Student was a general education student who would be instructed in the curriculum of whatever grade he was presently matriculating. Irrespective of what Student's goal specified, Student would be instructed at the seventh grade level when he transitioned from sixth to seventh grade. The evidence therefore supports the District's contention that its failure to specify seventh grade standards in Student's written expression goals did not invalidate the goals.

81. Student also contends that he required a reading comprehension goal. Student bases this belief on the extremely low reading comprehension score he obtained on the testing administered by Ms. Priest. However, Student's standard score of 45 put him in less than the first percentile of performance for a child his age. District witnesses Mr. Davis and Mr. Garcia rejected the possibility that Student's score was valid. Student scored in the average to above average range in reading comprehension on all District administered assessments and scored in the above-average range on the Lindamood-Bell assessment. Student's teachers unanimously agreed that Student was capable of reading at grade level. Based on the totality of the circumstances, the District's position that Student's reading score on Ms. Priest's assessment was an anomaly is much more persuasive than Parents' reliance on that score to assert that Student had a reading comprehension deficit. The evidence demonstrates that no such deficit existed and therefore, the District was correct in failing to develop a reading comprehension goal for Student.

82. Student also contests the necessity of the three study skills goals, as well as the District's proposed placement of Student in a study skills class. It is unclear why Student does not believe he requires the study skills goals. The evidence in this case is substantial that Student has deficits in organization, attention, and short-term memory. Student's general education teachers both recounted how Student's grades are depressed not because of any lack of ability on his part but on his failure to do his assignments and/or turn them in. Mother acknowledged that Student would lose his schoolwork, not turn it in, or even misrepresent that homework had been assigned. The District has proven by more than a preponderance of the evidence that Student required the study skills goals in order to progress in the curriculum.

83. Student also contends that he should have had a math goal. The only basis for Student's assertion is that he was not passing his math class. However, Student's

standardized assessments, California state testing scores available to the District at the time it offered this IEP, and Student's independent assessments all indicated that Student was generally at grade level in math. Despite his attention deficits, Student's math achievement scores and Lindamood-Bell assessment scores in math all demonstrated that he was retaining math information and was able to operate at grade level in math. Mr. LaPorte, Student's math teacher, indicated that it was Student's failure to do assignments and homework that was depressing his grades. Mr. LaPorte's math quizzes were based on the homework assignments. Since Student was not completing them, Student was not familiar with the subject matter on the tests. Student was able to give correct answers to oral math problems. The District has met its burden of proof that Student did not have a deficit in math and therefore did not require a math goal.

84. The District contends that Student does not require a goal in self-advocacy or social skills. The District contends that Student's teachers testified to the same at the hearing. Student also contends that he requires a self-advocacy goal because he is too shy and afraid of being thought "stupid" to affirmatively ask for help in his academic classes or in his study skills class. Student also had been the victim of a bullying incident where he was assaulted by some classmates. Student had been unable to discuss the incident with either his parents or his teachers. While the District took appropriate steps to address the incident, Parents continued to have concern that Student would not report any future bullying.

85. Although Mr. Goode did not recall that any IEP member expressed concern during the IEP meetings about Student's lack of self-advocacy, the audio recordings of the meetings indicate to the contrary. Mother broached the subject several times. In response to her concerns, special education teacher Kathy Adams acknowledged that Student would not initiate a request for assistance in her class. Rather, Ms. Adams had to approach him and ask Student with what he needed help. Ms.

Adams indicated that she was doing her best to teach Student to advocate for himself, and that she had discussed the issue with Student's general education teachers. The problem with Ms. Adams's initiative in this regard is that if self-advocacy is not part of Student's IEP, his next teacher would not necessarily know of his difficulties in this area and therefore would not know to address them.

86. Student has therefore shown by a preponderance of the evidence that the District should have written a self-advocacy goal for him. However, as discussed below, this is the only inadequacy in the District's proposed IEP. As stated above in Legal Conclusion 8, a decision on whether a district's proposed IEP offers a FAPE must be made only after looking at the IEP in its entirety. The lack of one goal in one area, where that area was already being addressed by the District in spite of the lack of a goal, is not sufficient to invalidate the District's proposed IEP. The query is whether the District's proposed educational program in its entirety is reasonably calculated to enable the particular child to garner educational benefits. In this case, the District has demonstrated by a preponderance of the evidence that its proposed IEP was so calculated.

Proposed Placement / LRE

87. The District's offer of placement is general education with one 45-minute class of specialized academic instruction in which the District would address Student's written expression and study skills goals. The District contends that this offers Student an appropriate placement in the LRE . Student contends that he requires a more restrictive placement. At various times, he has suggested that the District either place him at a non-public school, place him in some type of special education class, at least for math, or place an aide in his classroom. Student also contends that his right to a FAPE was impeded because the District would not provide him with band class as an elective.

88. Legal Conclusions 1 through 10, 74, and 75 are incorporated herein by reference.

89. A child with a disability must be educated with children who are not disabled to the maximum extent appropriate. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56342.) A child with a disability should be removed from the regular educational environment only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. A child with a disability shall not be removed from an age-appropriate regular classroom solely because the general curriculum requires modification. (34 C.F.R. § 300.116(e).) In determining the program placement of the student, a school district shall ensure that the placement decisions and the placement are made in accordance with federal requirements regarding placing the child in the LRE. (Ed. Code, § 56342, subd. (b).)

90. When determining whether a placement is the LRE for a child with a disability, four factors must be evaluated and balanced: the educational benefits of full-time placement in a regular classroom; the non-academic benefits of full-time placement in a regular classroom; the effect the presence of the child with a disability has on the teacher and children in a regular classroom; and the cost of placing the child with a disability full-time in a regular classroom. (*Vashon Island, supra*, 337 F.3d at pp. 1136-1137; *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*))

91. After considering the four *Rachel H.* factors in light of the evidence presented in the instant case, it is clear that the District has met its burden of persuasion that the LRE for Student was the public school general education classroom with supports and services to address his deficits in written expression, organization, attention, and short-term memory needs.

92. The last three *Rachel H.* factors do not impact this case. Neither party presented any evidence that Student would receive non-academic benefit from being placed outside the general education environment. Nor did either party present any evidence that Student had maladaptive behaviors in his general education classes that impeded him or his peers from being able to learn or prevented his teachers from instructing the class. Finally, neither party addressed the issue of the cost of a general education placement versus a placement outside the general education environment.

93. The only issue addressed by either party was the first *Rachel H.* factor, which focuses on the academic benefits of full-time placement in a general education classroom. In this case, the District presented substantial evidence that Student is capable of progressing academically in a general education environment as long as he is given accommodations and supports. Those supports consisted of state testing to be given in a small group setting; clarification of directions, small group instructions, extra time on assignments, repetition of instruction and direction, and remediation; the use of graph paper, skill charts, and word problems to be read aloud; use of an electronic speller, graphic organizers, and access to computers; separate content and homework grades; monitoring of assignments and projects; and a multiplication chart to be available in math. All of these accommodations were designed to enable Student to remain in general education classes.

94. Student has average or above average intelligence. He scores in the average range on most areas of academic achievement. He produces grade level work when given the support and accommodations he requires. The most significant deterrent to Student's progress is his lack of attention and organization. The District specifically addressed those deficits through its proposed goals and accommodations, as well as through the proposal to place Student in a special education class for study skills. The evidence at the time of the development of the IEP was substantial that

Student can and should be educated in a general education environment as long as he received the appropriate supports and accommodations.

95. The primary basis for Student's contention that the District's proposed placement was not appropriate for him was the fact that his state test scores dropped from fifth to sixth grade and the fact that his grades for the first month or two of seventh grade continued to be below or far below passing.

96. However, the evidence on which Student bases his argument was not known or available to the District during spring 2013 when the District was developing Student's IEP. While later acquired evidence is sometimes admissible to prove the validity or invalidity of an IEP offer (*see E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1004), the evidence must be relevant. There is no way the District could have known in spring 2013 that Student's state test scores had significantly regressed or that he would continue to be unable to pass his classes.

97. Student's grades for the beginning of seventh grade are even less probative of the validity of the District's proposed IEP when one considers that Parents have not consented to any portion of the IEP. Therefore, none of the goals or newly recommended accommodations has been implemented. It is problematic to argue that the proposed IEP is invalid based on Student's lack of progress where the recommended program has not been at least attempted. Parents' argument amounts to saying that Student would not have progressed had it been implemented. There is no evidence other than speculation to support this assertion.

98. Parents also suggested that Student be placed in a non-public school or that the District should place an aide in Student's classroom. However, Student provided absolutely no evidence in support of these contentions.

99. Parents also contend that the District should have offered Student a band elective. However, the schedule for all general education students at Roosevelt Middle

School, where Student attends school, only has room for one elective. Student's special education needs are such that he requires some specialized academic instruction. His elective class is therefore occupied by study skills where Student can concentrate on working on his goals. Any other alternative would either eliminate the special education support Student needs to have a FAPE, or eliminate a general education core subject, which Student requires to promote to high school and eventually, graduate from high school.

100. Parents were sincere in their belief that Student could not progress in the general education environment. However, Student's teachers, who are professionals with many years of experience, were just as sincere that Student is capable of making progress without being removed from general education for his core academic subjects. There is simply no reason to doubt the sincerity of the teachers' belief. They had reviewed Student's test scores, they had reviewed his work and they had observed him in class for over half a year. And, the teachers all wanted Student to succeed. The evidence available to the District at the time it developed Student's IEP supports a finding that the IEP proposed by the District offered Student a FAPE. The District has met its burden of proof that the goals it proposed for Student, and a general education setting, with appropriate services and supports, was the LRE for Student.

Related Services

101. The District contends that Student is fluent in written and spoken English, that Student therefore did not require English language development instruction in order to receive a FAPE. The District contends the only related service Student requires is assistive technology and that it has appropriately met Student's needs by providing him with the necessary technology through the accommodations offered in the IEP. Student contends that he required English language development instruction as part of his IEP. Student also contends that the District should have provided him with goals and

services in speech. Student further contends that he should have been provided with additional assistive technology, such as an iPad.

102. Legal Conclusions 1 through 10, 74, 75, and 77 are incorporated herein by reference.

103. In California, related services are called designated instructional services (DIS). (Ed. Code, § 56363.) DIS includes speech and language services and other services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1527.) DIS services shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.” (Ed. Code, § 56363, subd. (a).) English Language Development is a state-mandated program (Ed. Code, § 52160, *et seq.*) available to both general education and special education students that may be a related service when necessary for a special education student to benefit from his or her education.

104. A school district is required to provide any assistive technology device that is needed to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.105; Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires assistive technology devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324 (a)(2)(v); Ed. Code, § 56341.1, subd. (b)(5).) An assistive technology device is any item that is used to increase, maintain, or improve the functional capabilities of a child with a disability. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

105. Student’s family speaks Spanish at home. The District designated Student an English language learner when he began kindergarten. It provided Student with English language development intervention at least through fifth grade. The District administered the CELDT to Student starting when he was in kindergarten. Student

progressed steadily in every area tested (reading, writing, listening, and speaking English) up until fifth grade. Student's CELDT scores for that year were all in the beginning advance range, which would qualify Student for declassification as an English language learner.

106. However, in sixth grade, Student's CELDT scores plummeted. His scores were at the beginning range for listening, reading, and writing English. Student's score in speaking English had dropped to the intermediate range.

107. Although Student believes that his latest scores support a finding that English language instruction should have been included in his IEP, the District's evidence was persuasive that Student's sixth grade CELDT scores were an anomaly. Ms. Green, Mr. Cameron, and Ms. O'Toole all credibly testified that it is extremely unlikely that a child would lose his ability to understand, read, and write English from one year to the next. Student was not removed from an English environment at school between the time he took the test in fifth grade and the time he took it in sixth. He scored in the average range in most academic areas on the assessment administered to him during the 2012-2013 school year. There was no external factor that would cause his scores to regress so significantly. Mr. Cameron, Ms. O'Toole, and Ms. Green are all experienced in teaching English language learners. All three opined that one test score in the beginning range was not enough evidence of an inability to comprehend English where five years of test scores demonstrated steady progress. Although it is not known what caused the decrease in Student's CELDT scores, The District has met its burden of proof that there is no persuasive evidence that Student requires English language development intervention in order to access his education.

108. Student also contends that he required some sort of speech goals and/or services. Student bases his contention on the fact that he scored below average on the Test of Written Language, which indicated that he had difficulty with vocabulary and

constructing sentences. Parents believed that because of Student's difficulty with written language, the test results obtained by Ms. Palmatier on her speech and language assessment of Student had to be suspect. The speech and language assessment administered by Ms. Palmatier indicated that Student did not qualify for speech and language services because his expressive and receptive language skills were at or above-average. Neither Ms. Palmatier nor her supervisor Jo Taylor were able to convince Parents that deficits in written language do not necessarily equate to deficits in receptive or expressive spoken language.

109. Although Parents questioned the validity of Ms. Palmatier's assessment, Student presented no evidence to support a finding that she did not utilize appropriate assessment tools or did not administer the assessments properly. The mere fact that Ms. Palmatier is new to her profession does not indicate a lack of ability to assess Student. Ms. Palmatier was a forthright witness. Her testimony indicated a broad knowledge of her field and of the tests she is qualified to administer. During the IEP meetings, she attempted to address all of Parents' concerns. Other than Parents' distrust of the assessments, Student presented no evidence that would support a finding that he required speech and language goals or services in order to receive a FAPE. The evidence the District presented through Ms. Palmatier's assessment and testimony amply support the District's position that Student does not qualify for speech services and does not require such services in order to receive a FAPE. The District has met its burden of proof in this respect.

110. The District contends that the only assistive technology required by Student is a spell-checker to address his difficulty in spelling correctly and access to a computer should he wish to type rather than handwrite assignments. Parents believe that the assistive technology assessment administered by Mr. Adams was inadequate. They believe that Student requires additional assistive technology, such as an iPad.

111. Mr. Adams has been conducting assistive technology assessments for many years. He utilized an assessment tool that, while non-standardized, is used nationally to determine the assistive technology needs of special education students. The test consisted of having Student write and type sentences under different circumstances. The results of the test demonstrated that Student was capable of writing legibly when he paid attention to his writing and that he was able to handwrite faster than he could type. Mr. Adams administered a test he uses with many of the students he assesses. It is a nationally recognized test. There is no reason to believe that it was not an adequate measure of Student's assistive technology needs.

112. Parents believed that Mr. Adams did not actually assess Student. They believed that Mr. Adams had merely adopted a prior assistive technology assessment administered to Student in a prior year. There is no evidence or basis for that belief. Mr. Adams testified that he assessed Student. He testified to the assessment he used and how and why he administered it. Mr. Adams took actual writing samples from Student, who wrote his name on the top of the paperwork. Parents did not contest that it was Student's signature on the page. Parents have provided no evidence other than their conjecture that Mr. Adams did not assess Student.

113. Mr. Adams recommended that Student continue using a spell-checker and that the District continue to provide Student with access to a computer so that he could type assignments if he preferred. The District adopted those recommendations in its IEP offer. Mr. Adams did not believe that Student required additional assistive technology in order to benefit from his education.

114. Student contends that the District should have offered more advanced technology to him, such as an iPad. Other than the fact that Student uses an iPad at home to access educational programs obtained for him by his parents, Student offered no evidence that an iPad or other technology was necessary for him to benefit from his

education. The evidence offered by the District through Mr. Adams's assessment and testimony supports the District's position that it properly assessed Student in the area of assistive technology. This evidence also supports the District's contention that Student does not require additional assistive technology in order to receive a FAPE.

ESY

115. The District contends that Student does not require ESY instruction or services because there is no evidence that during summer breaks Student regresses more than do his typically developing peers. The District contends that it had no information that Student could not recover the information he lost over summer breaks at the beginning of the school year when all teachers review past subject materials. Student contends that his grades in school, including grades for the fall 2013 semester, as well as his most recent scores on the California State Testing, indicate that he is not retaining sufficient information. Student therefore contends that he requires extended school instruction to prevent excessive regression.

116. ESY services shall be included in a student's IEP if the IEP team determines that the services are necessary to provide a FAPE in excess of the instruction and services offered during the regular academic school year. (34 C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3); Cal. Code Regs., tit. 5, §§ 3043 and 3043, subd. (f).) Students who are eligible for ESY are those who have disabilities which are likely to continue indefinitely or for a prolonged period, and for whom interruption of their education may cause regression which, when coupled with limited recoupment capacity, renders it unlikely or impossible that the child would attain the level of self-sufficiency and independence that would otherwise be expected in view of the child's disability. (*Ibid.*)

117. Legal Conclusions 1 through 10, 74, 75, and 102 are incorporated herein by reference.

118. At the time of the IEP meeting at issue in this case, the evidence the District had regarding Student's academic progress was based on his California State Testing scores from fifth grade, Students class grades, his progress in class, and his achievement test scores. The aggregate of this information indicated to the District that Student was a child of average intelligence whose deficits had not prevented him from scoring in the average range of most of his test scores. The evidence from all these sources indicated to the District that Student had the capability to meet grade standards in a general education classroom and that he did not suffer long-term memory deficits.

119. The District did not believe that Student required ESY services because he had no history of regressing academically during summer breaks and being unable to regain the information when it was re-taught at the beginning of the following school year. Student's scores on assessments and his fifth grade state testing scores, the only information available to the District at the time it was developing Student's IEP, support the District's belief.

120. Although Student asserts that he requires ESY services because he is in fact failing to progress, his position is based on evidence not available to the District during the IEP meetings in spring 2013. Student's state test scores for sixth grade did not become available until the fall of 2013. The fact that he would continue to earn less than passing grades in seventh grade was also an unknown factor during the IEP process. Student presented no evidence that he was regressing during sixth grade or would fail to recoup knowledge after the sixth grade summer break. The preponderance of the evidence therefore supports the District's contention that Student did not require ESY services in order to receive a FAPE at the time the District made its IEP offer to Student.

CONCLUSION

121. The District has demonstrated by a preponderance of the evidence that it procedurally and substantively offered Student a FAPE in its IEP offer at issue in this case. Although Student proved that the District should have developed a self-advocacy goal for him, the lack of that goal was the only legally inadequate area in the District's proposed IEP. As stated above in Legal Conclusion 8, a decision on whether a district's proposed IEP offers a FAPE must be made only after looking at the IEP in its entirety. The lack of one goal in one area is not sufficient to invalidate the District's proposed IEP. The query is whether the District's proposed educational program in its entirety was reasonably calculated to enable Student to garner educational benefits. In this case, the District has demonstrated by a preponderance of the evidence that its proposed IEP was so calculated. The District's proposed IEP offered Student a FAPE in the LRE .

ORDER

1. The District's individualized educational program developed on March 6, March 13, March 18, April 10, May 13, and May 28, 2013, offered Student a FAPE in the LRE .
2. The District may implement this IEP without the consent of Student's parents.

PREVAILING PARTY

The decision in a special education administrative due process proceeding must indicate the extent to which each party prevailed on issues heard and decided. (Ed. Code, § 56507, subd. (d).) Here, the District prevailed on the issue presented for hearing.

RIGHT TO APPEAL

The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of this Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b); Ed. Code, § 56505, subd. (k).)

DATED: December 20, 2013

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings