

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT,

OAH CASE NO. 2014110630

WESTMINSTER SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014080827

AMENDED DECISION¹

Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on November 14, 2014, naming Westminster School District; case number 2014110630. District filed an initial due process hearing request with OAH on August 25, 2014, naming Student; case number 2014080827. The cases were consolidated on November 24, 2014. District filed an amended due process request on December 23, 2014. The amended due process request reset the 45-day time line to issue a decision.

¹ The Decision was first signed and issued on March 18, 2015. However, clerical error resulted in the Decision being issued without a date on the last page. The Decision is amended, on the last page, to correct the clerical omission of that date.

Administrative Law Judge Marian H. Tully, Office of Administrative Hearings, State of California, heard this matter on February 17, 18, 19, and 23, 2015, in Huntington Beach, California.

Attorneys Patricia R. Valenzuela and Margot Stevens appeared on behalf of Student. Student's mother and father attended the hearing.

Attorney Ernest L. Bell appeared on behalf of Westminster School District. Reagan Lopez, District Executive Director of Student Services, and Nancy Finch-Heuerman, West Orange County Consortium for Special Education Director, attended the hearing on behalf of District.

A continuance was granted for the parties to file written closing arguments and the record remained open until March 4, 2015. The parties timely filed written closing arguments, the record was closed and the matter was submitted for decision on March 4, 2015.

ISSUES²

STUDENT'S ISSUES

1. Did District deny Student a free appropriate public education in his September 30, 2014, individualized education program by failing to offer appropriate specialized academic instruction or tutoring services, and to provide books on tape for Student's use at home?
2. Did District deny Student a FAPE in the fall of the 2014-2015 school year by providing accommodations not listed in Student's IEP without prior written notice or parental consent?

DISTRICT'S ISSUES

1. Was District's multidisciplinary psychoeducational assessment, report date June 6, 2015, appropriate such that Student was not entitled to an independent educational evaluation at public expense?

² At hearing, the parties filed written stipulations narrowing the issues in the consolidated cases. The issues pled in the complaints have been combined, reorganized and rephrased to conform with the parties' stipulations and 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.) To the extent Student's closing brief argued procedural issues concerning the failure to document medical findings in the September 30, 2014 IEP, and District's failure to administer a complete Wechsler Individual Achievement Test, Third Edition, those issues were not pled in the due process hearing request, and are not addressed in this decision. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.)

2. Did District deny Student a FAPE by charging a fee for copying Student's records in response to record requests dated March 20, 2014, and November 25, 2014?

SUMMARY OF DECISION

The parties agreed Student was eligible for special education under the category of specific learning disability and that his disability manifests as deficits in written language and spelling. Student contends his specific learning disability is dyslexia, and that medical diagnosis manifests as deficits in reading as well as written language and spelling. However, Student did not prove he actually had deficits in reading. At the time of District's September 30, 2014 IEP, Student was reading with grade level fluency and comprehension. He independently and timely completed his classwork in all subjects with passing grades and could complete assessments without adult assistance. He was able to access the general fifth grade curriculum in a regular classroom and to make progress on his goals in the areas of writing, spelling and attention. The September 30, 2014 IEP was individually designed to provide meaningful educational benefit to Student and was reasonably calculated to meet his needs in spelling, written language, and attention.

Student contends District modified his curriculum without prior written notice or parental consent. Prior written notice is not required for occasional adjustments to assignment due dates or for grading methods applied in all subjects for all students in the fifth grade general education classroom. Extending the due date on two assignments to help Student adjust to more difficult work at the beginning of a new school year and the fifth grade teacher's class-wide grading methods did not constitute a change, or refusal to change, Student's identification, evaluation, or educational placement. Therefore, no prior written notice or parental consent was required.

As to District's first issue, District's multidisciplinary psychoeducational assessment met all legal requirements. Accordingly, District was not required to provide

an independent psychological evaluation at public expense. As to District's second issue, District did not deny Student a FAPE by billing for copies of Student's educational records. Parents were timely allowed access to Student's educational records and District billed less than the actual cost for copying. Ultimately, Parents received copies of the records at no cost to them. Therefore, the billing did not effectively deny Parents' right to receive copies.

FACTUAL FINDINGS

1. Student is a ten year old fifth grader who resided at all relevant times with his Parents within District. District first found Student eligible for special education under the category of specific learning disability on April 26, 2013.

FOURTH GRADE, 2013-2014 SCHOOL YEAR

2. Student attended a general education fourth grade class at his school of residence for the 2013-2014 school year. Student's IEP provided for daily specialized academic instruction from a special education teacher. Amy Wilson was his general education teacher. Student had difficulty in spelling and writing in her class. Student misspelled words Ms. Wilson knew he could spell. He reversed letters, especially "b" and "d." Student did not like writing. He needed to write with more organization and elaboration. He did not have difficulty in reading or reading comprehension.

3. Ms. Wilson reported academic achievement three times over the school year. Each subject and each sub-category were graded independently and the grades were not cumulative. Student met grade level standards in all areas for all three reporting periods, except some sub-categories related to spelling and writing. Overall in writing, he received the equivalent of a "C" in each reporting period, although he needed improvement in effort during all the reporting periods. Overall in reading, Student received the equivalent of a "C" or better for each reporting period. Student

demonstrated outstanding effort in math and was at or above grade level standards in math, algebra, and geometry in all reporting periods.

4. Donna Berg Hilts provided specialized academic instruction for Student. Ms. Hilts became familiar with Student, and attended his IEP team meetings from the time he was in second grade. Ms. Hilts taught special education for more than 20 years. She began working for District in 1995. Her responsibilities included academic testing, report writing, attending IEP meetings for initial and triennial evaluations, and collaboration with general education teachers. She had administered some 500 to 600 academic evaluations.

5. Ms. Hilts provided two hours of specialized academic instruction in Ms. Wilson's classroom per week using a co-teaching model in accordance with his IEP. Ms. Hilts did not provide specialized academic instruction outside of the classroom because Student did not like to be "pulled out" and he did not want to be singled out.

6. In Ms. Hilts' opinion Student was reading at grade level in fourth grade. His academic difficulties were in written language and spelling and he had made progress on letter reversals by the end of fourth grade. Student reached grade level reading fluency in March although he achieved a raw score two points below grade level in May. District's progress monitoring benchmarks in English language demonstrated Student was below basic in November 2013 and March 2014 and proficient by the end of the year.

7. Student attended Kumon Learning Center to develop his math skills throughout fourth grade and during the summer. Student's participation in the Kumon program included work sheets to be completed at home.

MARCH 19, 2014 RECORDS REQUEST AND REQUEST FOR ASSESSMENT

8. On March 19, 2014, Parents made a request for educational records. Student asked District to waive any fees associated with duplicating the records. Parents

also asked District to assess Student in all areas, including reading and writing difficulties typically associated with dyslexia.

9. Within five business days of the request, District left two voice mails informing Parents that the records were available and that District would provide Parents a bill in the amount of \$120.60 for the cost of reproducing the records. District charged 20 cents per page to reproduce copies of student records. District's actual cost was more than 20 cents per page. On March 31, 2014, District sent a letter to Parents informing them that the records were available and that District would waive the cost if Parents demonstrated they were unable to pay the copy charge. Parents did not respond.

10. District sent an assessment plan to Parents on April 3, 2014. Parents consented to the assessment plan on April 11, 2014.

MAY 2, 2014 IEP TEAM MEETING

11. Student's annual IEP team meeting was held near the end of fourth grade on May 2, 2014. The team discussed Student's progress in fourth grade. Student met his previous goals. The team developed new goals in spelling and written expression. The team determined and changed Student's eligibility for special education from specific learning disability to a primary category of autistic-like behaviors and a secondary eligibility of other health impairment due to attention deficit hyper activity disorder. District offered specialized academic instruction for two hours per week in the general education setting and other supports. Parents consented to the May 2, 2014 IEP on May 5, 2014.

COMPLIANCE COMPLAINT

12. On May 5, 2014, Parents filed a compliance complaint with the California Department of Education. The complaint alleged District violated Education Code

section 56504 by charging an unreasonable per page cost of 20 cents. Parents asked CDE to order District to provide the records at no cost or not more than nine cents per page. CDE investigated Parents' complaint and issued a report on July 3, 2014. CDE found that the charge per page was reasonable and did not exceed the actual cost to produce copies. The report further stated that the charge effectively denied Parents' right to obtain copies. The complaint did not allege that the cost effectively denied Parents' right to copies, no evidence was submitted upon which to base that conclusion, and CDE did not make factual findings as to that issue. District provided the records to Parents at no cost that same day.

STUDENT'S TRIENNIAL ASSESSMENT

13. Student's triennial assessment was due in April 2015. At Parents' request District agreed to conduct Student's multidisciplinary triennial assessment earlier than required. In planning the assessment, District considered an extensive list of suspected disabilities, a detailed list of requested assessment tools, the observations to be conducted and the conditions described in Parent's March 19, 2014 request for assessment. The early triennial assessment took place in May 2014.

14. District conducted a psychoeducational assessment and assessed in other areas including adapted physical education, occupational therapy, speech and language, health, audiology and sensory processing.³ The psychoeducational assessment was conducted by District school psychologist Jenny Thuy Trang Nguyen, resource specialist Ms. Hilts, and Dr. Ellen Fitzsimmons, District program specialist and former school psychologist.

15. Ms. Nguyen was a nationally certified school psychologist. She held an M.A. in educational psychology, educational specialist, and a Pupil Personnel Services

³ By the parties' stipulation, only the psychoeducational assessment is at issue.

Credential in school psychology. Her employment as a school psychologist with District began in 2012. Ms. Nguyen's responsibilities included conducting initial and triennial assessments and participating in IEP meetings. Ms. Nguyen was familiar with Student. She worked with Student weekly during the 2012-2013 school year beginning in January 2013. Ms. Nguyen prepared the April 3, 2014 assessment plan and attended the May 2, 2014 IEP team meeting.

16. The psychoeducational assessment included review of school records, previous assessment results, health records, and developmental history; parent and teacher input; interviews with Student and his educational team; classroom, playground and clinical observations; and standardized testing. Testing took place over four days in one to two hour sessions with Ms. Nguyen and Ms. Hilts. Dr. Fitzsimmons consulted with Ms. Nguyen and Ms. Hilts before and during the assessments and reviewed the assessment report.

17. Ms. Nguyen administered cognitive, phonological and behavioral testing. Ms. Hilts administered academic testing. Their assessment materials included the Woodcock-Johnson Test of Achievement - Third Edition; Woodcock-Johnson Test of Cognitive Abilities, Third Edition; Wechsler Individual Achievement Test, Third Edition; Comprehensive Test of Phonological Processing, Second Edition; Clinical Evaluation of Language Fundamentals- 5, Comprehensive Assessment of Spoken Language Pragmatic Judgment Subtest; Wide Range Assessment of Memory and Learning, Second Edition; Gilliam Autism Rating Scales, Second Edition; Conners Rating Scale, Third Edition; Autism Diagnostic Observation Schedule; Childhood Autism Rating Scale; as well as a number of other standardized and non-standardized testing components. All tests were administered in English, Student's primary language. The assessment materials were selected and administered without racial, cultural, or gender discrimination. Ms. Nguyen and Ms. Hilts were qualified to administer, and to interpret, the tests they administered.

Ms. Nguyen and Ms. Hilts administered the tests they used in conformance with testing instructions and each test was valid for the purpose for which the test was used. No single test or procedure was used to determine Student's eligibility for special education or to determine his educational program.

18. Student was comfortable and at ease during testing, although he responded too quickly, self-corrected on some items, and some inattention and fidgeting was noted. He completed academic testing without adult assistance within the time allowed. Student's general intellectual ability was in the high average range. He had average skills in visual processing, reading, visual memory, and attention/concentration. His academic achievement in broad reading, written language, brief reading, written expression and brief writing skills were in the average range. His academic achievement in math was in the high average range. Overall, Student had average or high average academic skills in all areas with the exception of cognitive efficiency, processing speed and spelling. Testing in those particular areas were in the low average range. Student also tested poorly in the area of phoneme isolation⁴ but his overall phonological awareness was within average range. Student's verbal memory was low average, but his overall memory ability was in the average range.

19. Ms. Nguyen prepared an assessment report dated June 6, 2014. The assessment results demonstrated Student met the eligibility criteria for specific learning disability in the area of written expression, particularly spelling, due to an underlying attentional processing disability. The assessment results demonstrated Student no longer met the criteria for eligibility based upon autistic-like behaviors or other health

⁴ Phoneme isolation requires the test taker to identify the first, middle and last sounds of a word. Student was able to identify the first and last sounds of words, but had difficulty with middle sounds.

impairment due to ADHD. Ms. Nguyen recommended the IEP team consider Student's unique needs in spelling, editing and writing.

20. Dr. Fitzsimmons reviewed the report. Dr. Fitzsimmons was first employed by District as a school psychologist in 2002 and was District's program specialist beginning in 2011. She was employed as a school psychologist in other districts from 1996 through 2002. She holds a doctorate in educational psychology, a master's degree in counseling, and credentials in school psychology and school counseling. Dr. Fitzsimmons became familiar with Student when she set up Student's initial assessment while he was in second grade attending a private school. Since then she attended Student's IEP team meetings and was involved in his program when Parents had concerns.

21. Dr. Fitzsimmons compared Student's academic progress as reflected in a Woodcock Johnson test administered in 2013 with the results on the same test in 2014. The test measured Student's performance against same age peers. Student's test results were consistent in both years, which indicated one year of academic progress as measured by that test. However, observations, classwork, and the results of other tests indicated a severe discrepancy between Student's intellectual ability and his academic achievement in written expression, especially spelling. The deficits in Student's spelling and writing skills were due to a psychological disorder in the area of attention processing. Attention processing affects the brain's ability to discriminate between what information is relevant and irrelevant to the task at hand, to organize and to focus.

JUNE 9, 2014 IEP

22. Student's IEP team met on June 9, 2014. Ms. Wilson informed the team that Student read aloud with grade level fluency, and showed grade level reading comprehension in class. She confirmed Student's continued difficulty with written expression and spelling. Ms. Nguyen, Ms. Hilts and Dr. Fitzsimmons, based upon

multiple sources, concluded that there was a severe discrepancy between Student's intellectual ability and his academic achievement in written expression. They recommended eligibility for special education under the category of specific learning disability in written expression, particularly spelling. The assessors also concluded, based upon multiple sources, that there was no discrepancy between Student's intellectual ability and his academic achievement in reading.

23. The team discussed his strengths and needs and reviewed his present levels of performance. Student met his IEP goals in spelling, written language and work completion. New goals were developed in the areas of written language, spelling, and writing. District offered placement in a regular general education classroom with specialized academic instruction four times per week for thirty minutes using a co-teaching model in the classroom. Accommodations and supports included subtle prompts (such as a tap on the desk or handing back work) to encourage Student to edit work, add more details and elaborate in his written work; preferential seating closest to the teacher; frequent movement breaks, alternative work positions, use of fidgets; and an extra set of text books for home use.

24. On July 25, 2014, Parents consented to the goals, objectives and placement. Parents disagreed with District's psychoeducational assessment and requested a publically funded independent educational evaluation.⁵ District considered the request, reviewed the assessment and concluded the assessment was appropriate. On August 25, 2014, District filed and served its initial request for due process in this case to determine whether District's psychoeducational assessment was appropriate. On

⁵ Federal law uses the term "evaluation" and California laws uses the term "assessment," but the two terms were used interchangeably by the parties at hearing and have the same meaning for purposes of this decision.

September 12, 2014, District sent Student a letter denying the request for an independent educational evaluation.

PRIVATE NEUROLOGICAL EVALUATION

25. Student was evaluated on July 30, 2014, and August 5, 2014, by Pantea Sharifi-Hannauer, M.D., a pediatric neurologist. Dr. Hannauer was board certified in psychiatry and neurology with special qualification in child neurology. The stated purpose for her evaluation was Parents' report that Student was not able to access his educational curriculum, had symptoms of emotional distress, and had some behavior issues. Parents asked Dr. Hannauer to evaluate Student and recommend better support services. Dr. Hannauer's results, conclusions and recommendations were included in a report dated August 5, 2014.

26. Dr. Hannauer's evaluation was based upon her clinical observation, Parents' report, and standardized tests administered by a psychologist in her office. Student was not observed in the school setting, no rating scales were sent to Student's teachers and no one involved in Student's educational program at school was contacted for any purpose. A psychologist in Dr. Hannauer's office administered the Wechsler Individual Achievement Test, Third Edition; Wechsler Intelligence Scale for Children, Fourth Edition; Central Nervous System Vital Signs; NEPSY-II⁶ subtest-Auditory Attention and Response Set; Connors Rating Scale, Third Edition (to Parent only); and Connors Comprehensive Behavior Rating Scales - Parent Report.

27. Dr. Hannauer interpreted the test results and concluded Student's cognitive abilities were "solidly average" with scattered scores relative to his strengths and deficits. Dr. Hannauer reported Student's discrepancies indicated an "underlying process that is limiting Student from functioning to his best abilities." Dr. Hannauer

⁶ NEPSY is not an acronym.

concluded Student's deficits were consistent with dyslexia, and that his learning disability was exacerbated by ADHD. She made a number of recommendations for supports to be added to Student's IEP.

SEPTEMBER 30, 2014 IEP

28. Student's IEP team met on September 30, 2014, to consider Dr. Hannauer's assessment and Student's transition to fifth grade. Parents and all other required participants attended. Student's advocate and his private tutor also attended. Attorney Stevens attended for Student and Attorney Bell attended for District.

29. The IEP team reviewed and considered Dr. Hannauer's report. The IEP team reviewed Student's present levels of performance. Jennifer Guzman, Student's fifth grade general education teacher, and Ms. Hilts reported that Student was working at grade level in all areas except spelling. Student was a hard worker, with a "great" work ethic. The IEP team reviewed Student's strengths in math and concerns in reading, and written expression. Student's academic needs were in writing, spelling and attention. The team discussed the amount of time Student spent on homework and whether he would benefit from books on tape. Student's tutor informed the team that a lot of time was spent reinforcing and completing homework. Parents asked District to provide books on tape for Student's home use. District IEP team members did not believe Student required books on tape to access the curriculum because his reading and comprehension skills were at grade level and his reading speed was above grade level.

30. After considering Dr. Hannauer's report, Student's present levels of performance, the information provided by Parents and Student's tutor, and concerns expressed by Student's tutor, advocate, attorney and Parents, District educators determined that Student did not need additional specialized academic instruction or books on tape to access his curriculum. The IEP team determined Student's eligibility category continued to be specific learning disability in the areas of written language,

spelling and attention. The team agreed upon the goals in Student's June 9, 2014 IEP for the 2014-2015 school year in written language, spelling, and writing first developed and an additional goal was developed for task completion. District's September 30, 2014 IEP offered the same placement, specialized academic instruction and supports provided in the June 6, 2014 IEP.

FIFTH GRADE, 2014-2015 SCHOOL YEAR

31. Ms. Guzman was Student's fifth grade general education teacher for the 2014-2015 school year. Ms. Hilts continued to provide specialized academic instruction in the classroom. In October 2014, Ms. Guzman allowed Student extra time to complete a math test and allowed him to complete a writing homework assignment in class the next day. Ms. Guzman allowed Student extra time on these two tasks to help him adjust to more difficult work at the beginning of his fifth grade year.

32. Ms. Guzman taught all subjects in her fifth grade classroom. Ms. Guzman's practice was to correct and grade spelling on spelling tests. She did not correct spelling errors, and spelling was not part of the grading criteria, on assignments other than spelling tests.

33. Student continued to attend Kumon through fifth grade. Parents hired an after-school tutor beginning in February 2014. In November 2014, Student began receiving services from Brain Balance Achievement Centers. Mother believed Brain Balance offered a holistic approach to academic improvement. Brain Balance therapy addressed attention, fidgeting, and nutrition in addition to academics. Mother believed an exclusion diet and supplements recommended by Brain Balance helped Student focus. Mother believed that Student would not have been able to access his curriculum at school without the services she obtained from Kumon, Student's tutor, and Brain Balance.

NOVEMBER 25, 2014 RECORDS REQUEST

34. Student sent District a records request on November 25, 2014. On December 8, 2014, District notified Parents that the requested records were available for pick-up and that a reasonable charge would be made for the cost of the copies. December 8, 2014, was the fourth business day after the request due to District's closure for the Thanksgiving holiday. On December 10, 2014, District was notified by the office of Student's attorney that a staff member of the firm would pick up, and pay for, the copies.

STUDENT'S WITNESSES

35. In Mother's opinion, Student did not meet his fourth grade goals. However, notes from the June 9, 2014 IEP team meeting do not reflect any questions or discussions about failing to meet goals from Parents, Student's tutor, his advocates or his attorneys. Notes from the September 30, 2014 IEP team meeting reflect a discussion of goals but no questions or concerns about failing to meet goals from Parents, Student's tutor, advocates or his attorneys. At hearing, Mother was concerned Student was not making progress in all academic areas and did not meet grade level standards when she compared state standards from the CDE website with Student's work. She believed that Student was not able to satisfactorily complete his homework without her help or the help of his tutor.

36. Susie Henry-Searight began tutoring Student after school on February 7, 2014. Ms. Henry-Searight knew Student from the time he was three years old as she was a personal friend of the family. She was the in-home nanny and surrogate grandmother for Student's cousin. The families were close and went on trips together.

37. Ms. Henry-Searight picked Student up from school and worked with him for an hour and a half or more, and longer on Wednesdays because that was a

shortened school day. She worked with Student four or five times per week depending upon baseball, Cub Scouts, Kumon and Brain Balance commitments. Ms. Henry-Searight helped Student by reading to him, re-teaching and pre-teaching his school work and with doing his homework. They played educational games, read and listened to books on tape when homework was finished. Ms. Henry-Searight worked with Student during the summer to provide "dyslexia therapy." Ms. Henry-Searight believed Student would not have been able to complete his homework without adult assistance. Ms. Henry-Searight attended Student's IEP team meetings on May 2, 2014, June 9, 2014, and September 30, 2014.

38. Ms. Henry-Searight held a degree in theology and was working toward certification with a private company for tutoring special needs children. She started Ms. Honeybee's Educational Therapy in June 2014. She previously taught children at Bethany Christian Academy, which does not require credentialed teachers, and home-schooled her now adult dyslexic son. Ms. Henry-Searight researched grade level standards on the CDE website. In her opinion, Student was not meeting grade level standards when she began working with Student and did not meet grade level standards for fifth grade at the time of hearing.

39. Although well intentioned and with the families' best interest at heart, Ms. Henry-Searight's conclusions and assumptions as to Student's educational needs carried little weight. Her education, training and experience did not qualify her to evaluate whether Student was meeting grade level standards based upon her research from the CDE website. Her opinion that Student could not complete his homework without adult assistance did not outweigh other evidence that Student was able to timely complete his school work and assessments without adult assistance with the supports and services provided by his IEP.

40. Dr. Hannauer testified as Student's expert. In her opinion the support offered in the September 30, 2014 IEP was not appropriate. She recommended at least two hours per day of resource help to teach Student ways to compensate for his deficits and to review, so that there were no gaps in his learning. Dr. Hannauer admitted Student was currently able to use his intelligence and strong visual memory to compensate for deficits in cognitive efficiency, processing speed, cognitive fluency, word reading and spelling. She was concerned that as the material became more difficult in higher grades, Student would not be able to compensate because of his dyslexia.

41. Dr. Hannauer first testified Student did not read at grade level. Her opinion was not supported by the testing conducted in her office. Student was evaluated during the summer between fourth and fifth grade. Dr. Hannauer's office administered the Central Nervous System Vital Signs computer based screening procedure. Guidelines for administering and interpreting the computer based program state "The CNS Vital Signs batteries can successfully be completed, without assistance, by a normal child with a fourth grade reading level." When asked to review the guidelines during the hearing, Dr. Hannauer then testified that Student was reading at grade level, but he would struggle as he got older. According to Dr. Hannauer, Student lacked basic foundational skills, but he could read at grade level based upon his intelligence and other strong memory and reading skills.

42. Dr. Hannauer's report contained a detailed description of the results of the Central Nervous System Vital Signs testing. The report states that the Central Nervous System Vital Signs "objectively assesses neurological function." Dr. Hannauer concluded, and her report stated, that based on the Central Nervous System Vital Signs assessment Student tested very low in simple attention, verbal memory, and in the low range in complex attention and reaction time. During hearing, Dr. Hannauer admitted that the Central Nervous Systems Vital Signs testing procedure is a screening tool, not an

assessment, is not a valid diagnostic tool, and that the domain scores in complex attention were invalid.

43. Dr. Hannauer was unable to defend other aspects of her report. As to her ADHD diagnosis; when comparing the Connor's Parent and teacher rating scales obtained by District, with the Parent rating scales obtained by her office, she testified that her diagnosis of "true" ADHD was less likely because it was based solely on Parent report. As to educational history; Dr. Hannauer testified she "probably" reviewed Student's records and IEP's. However, she also testified that the reason her office administered a complete Wechsler battery was because she did not have a copy of District's assessment, and she did not have the results from the sub-tests administered by District. She agreed that testing does not yield reliable results when the same tests are given less than three months apart. She later testified that Parents had given her a copy and that she reviewed District's assessment before the testing in her office. The inference from all the evidence was that Dr. Hannauer either did not receive District's assessment or did not review it.

44. Dr. Hannauer admitted that best practices would have been to document Student's educational history in her report, to obtain teacher ratings scales and to conduct observations. Her explanation for not using best practices was that it was not necessary to include Student's educational history in her report because the report was written for clinicians and Parents, and that it was not important for her to know what Student was doing in school or what supports he was getting for her to know what he needed. The inference from the evidence is that Dr. Hannauer either did not have Student's educational records or did not review the records before she prepared her report.

45. Dr. Hannauer's conclusions and assumptions as to Student's educational needs carried little weight because she did not observe Student in the educational

setting and did not obtain any information from his educators. Many of her recommendations for Student's educational needs were either already included in the September 30, 2014 IEP or not supported by any evidence of Student's need. For example, Dr. Hannauer recommended preferred seating, a sensory diet to decrease fidgeting, and cues or signaling when he was off-task, even though his September 30, 2014 IEP included preferential seating, use of fidgets, and subtle prompts to keep him on task for writing and editing. She also recommended an occupational therapy consult and a sensory diet based on Mother's report that Student was fidgety in class. Dr. Hannauer was apparently unaware Student had been fully assessed in the area of occupational therapy in May 2014, and the September 30, 2014 IEP addressed fidgeting and sensory needs a number of ways including fidgets, frequent movement breaks and alternative work positions.

DISTRICT'S WITNESSES

46. Ms. Nguyen, Ms. Hilts, Ms. Guzman and Dr. Ellen Fitzsimmons, criticized Dr. Hannauer's assessment and disagreed with her conclusions. They attended the September 30, 2014 IEP team meeting.

47. Ms. Nguyen reviewed Dr. Hannauer's report. She did not believe Dr. Hannauer's assessment was valid because there was no teacher input. Ms. Nguyen believed it was important to understand how a student's disability adversely affects the student's access to education. In Ms. Nguyen's opinion, the September 30, 2014 IEP offered an appropriate level of support for written language and spelling in the least restrictive environment. Student did not need specialized academic instruction or books on tape for reading.

48. Ms. Hilts reviewed Dr. Hannauer's report. Ms. Hilts was concerned about the "extreme" amount of testing that Student was being given and whether his attitude about test taking was affecting the results of the testing. Little more than a month after

Ms. Hilts tested Student, Dr. Hannauer administered one of the same tests. Ms. Hilts disagreed with Student's low word reading score the second time he was tested. Student's oral reading fluency was at grade level. Ms. Hilts read to, and listened to, Student read in fourth and fifth grade and she did not see any difference in Student's comprehension between when he was read to and when he read on his own. In Ms. Hilts' opinion, the September 30, 2014 IEP offered an appropriate level of support and Student did not need books on tape.

49. Ms. Guzman, an experienced elementary school teacher, did not believe Student needed more specialized instruction to make academic progress. She sometimes used books on tape in her classroom but she believed Student should not have books on tape at home because he read at grade level on his own and he should be encouraged to do that.

50. Dr. Fitzsimmons was critical of Dr. Hannauer's assessment because the results were based only on Parents report and no information was requested from anyone involved in his program at school. Dr. Fitzsimmons did not agree with the opinions of Mother, Ms. Henry-Searight and Dr. Hannauer that Student was only making progress based on the supports he received outside school because Student was able to complete his assignments and assessments independently at school within the expected time period.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁷

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁸ et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a))

⁷ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁸ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit," or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a

due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this consolidated matter, Student had the burden of proof on Student's issues and District had the burden of proof on District's issues.

STUDENT'S ISSUE 1: SPECIALIZED ACADEMIC INSTRUCTION AND BOOKS ON TAPE

5. Student contends District denied him a FAPE because the September 30, 2014 IEP should have provided more specialized academic instruction or tutoring and books on tape for his use. District contends, at the time of the September 30, 2014 IEP team meeting, that Student was making appropriate progress in all academic areas, including reading. According to District, Student did not need additional services to obtain educational benefit in the least restrictive environment. For the reasons set forth below, Student failed to prove that Student required additional specialized instruction or books on tape in order to access his education.

Applicable Law

6. A student is eligible for special education and related services if he or she is a "child with a disability" such as a specific learning disability, and as a result thereof, needs special education and related services that cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subds. (a) & (b).)

7. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K.*

v. Longview School Dist. (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others.

8. 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. (*Gregory K. v. Longview School Dist., supra*, 811 F.2d at 1314.) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. 176, 208.) *Rowley* requires a school district to provide a disabled child with access to education; it does not mean that the school district is required to guarantee successful results. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301, *Rowley, supra*, 458 U.S. at p. 200.)

Analysis

9. There was no dispute Student was eligible for, and required, special education due to specific learning disabilities in the area of spelling and writing. There was no dispute he had a disorder in a basic psychological process involving attention. Student argues that dyslexia is a neurological, verbal based learning disability that manifests as the inability to decode words when reading, put thoughts into coherent language and spelling issues. Therefore, according to Student, the September 30, 2014 IEP denied him a FAPE because District did not provide a sufficient level of specialized

academic instruction or tutoring to meet his needs in reading and did not provide books on tape for Student's use.

10. The weight of the evidence established that Student did not have a reading impairment that required specialized academic instruction in reading or books on tape. The parties parsed out and debated the validity and interpretation of raw scores in subtests of standardized tests related to reading, written language and spelling. However, Student's overall performance on standardized tests did not demonstrate a severe discrepancy between achievement and intellectual ability in written language, basic reading skills, or reading comprehension. (See Ed. Code, § 56337, subd. (b).) Some subparts of some standardized tests showed mixed results in the area of written language. However, the IEP team also considered data obtained from other standardized assessment instruments; information provided by Parents and Student's teachers; evidence obtained from observations; Student's work samples, and other information and determined there was a severe discrepancy between Student's intellectual ability and his skills in written expression and spelling. (See Cal. Code Regs., tit. 5, § 3030, subd. (j)(4)(C).⁹) Applying the same inquiry to Student's reading skills did not demonstrate any discrepancy between Student's intellectual ability and his basic reading skills, or reading comprehension.

11. Dr. Hannauer admitted Student was able, during the summer between fourth and fifth grade, to independently complete testing that required the test taker to

⁹ Eligibility criteria for specific learning disabilities were amended effective July 1, 2014. District's assessment report was prepared June 9, 2014, thus the pre-amendment criteria apply. However, none of the amendments to the regulations affect the outcome of this decision. All further references are to the California Code of Regulations in effect at the time of the assessment.

read at a fourth grade level. She attempted to explain away Student's passing grades in all subjects but writing and spelling, and his grade-level reading skills, because Student was currently able to use his intelligence and strong visual memory to compensate for deficits in cognitive efficiency, processing speed, cognitive fluency, word reading, and spelling. She predicted, based on her medical diagnosis of dyslexia, Student would have difficulty in higher grades as the material became more difficult. However, special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs, tit. 5, § 3089.) Dr. Hannauer's concern that, because Student had dyslexia, he would not be able to progress as material became more difficult in higher grades brought nothing useful to any discussion of Student's current educational needs.

12. Lastly, although Dr. Hannauer disagreed with Ms. Nguyen, Ms. Hilts, Ms. Guzman, Ms. Wilson and Dr. Fitzsimmons regarding the level of specialized academic instruction required to meet Student's needs, her recommendations were similar to what was provided in Student's September 30, 2014 IEP and implemented in Student's program. Dr. Hannauer's additional recommendations as to how to better support Student did not demonstrate that the September 30, 2014 failed to meet the *Rowley* standard. Student did not meet his burden of demonstrating he was denied a FAPE on this ground.

STUDENT'S ISSUE 2: PRIOR WRITTEN NOTICE

13. Student contends District changed his educational placement by providing accommodations not included in his IEP without first providing prior written notice and without Parental consent. Parents argue that they are "not per se against these accommodations" but that Student's IEP should reflect modified grading and extra time to complete tasks to assess the work he is performing. District contends it did not

change Student's placement without prior written notice or Parents' consent because Student's grades were not modified. For the reasons set forth below, Student did not meet his burden of proof on this issue.

Applicable Law

14. The IDEA requires that written notice be given to the parents of a child with a disability within a reasonable time before a school district: a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (20 U.S.C. § 1415(b)(3).) That notice must include: 1) a description of the action proposed or refused by the agency; 2) an explanation of why the agency proposes or refuses to take the action; 3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; 4) a statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA and the means by which a copy of the procedural safeguards can be obtained; 5) sources for parents to contact to obtain assistance in understanding the provisions of this part; 6) a description of other options that the IEP team considered and the reasons why those options were rejected; and 7) a description of other factors that are relevant to the agency's proposal or refusal. (34 C.F.R. § 300.503.)

15. The failure to timely issue a prior written notice, if notice was required, would be a procedural violation of the IDEA. A procedural violation results in the denial of a FAPE if it impedes the child's right to a FAPE, significantly impedes parents' opportunity to participate in the decision-making process, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,1484, *superseded by statute*

on other grounds, as stated in R.B. v. Napa Valley Unified School Dist. (9th Cir.2007) 496 F.3d 932, 939.)

Analysis

16. Minor daily adjustments in the due dates of class assignments and grading practices that apply to all students in Ms. Guzman's fifth grade class do not constitute a change, or the refusal to change, the identification, evaluation, or educational placement of a special education student. Other than Ms. Guzman's practice of not correcting or counting off for spelling errors except on spelling tests and the extra time she allowed for the writing assignment and the math test in October, there was no evidence Student's grades were modified or that he was allowed extra time to complete his work. It was not necessary for the teacher to correct every spelling error on every assignment in every subject for Student to make progress on his spelling goals and to access his education. Student failed to show that District should have provided prior written notice, and did not offer any evidence that the teacher's actions impeded Parents' right to participate in educational decision making or resulted in a denial of a FAPE.

DISTRICT'S ISSUE 1: PSYCHOEDUCATIONAL ASSESSMENT

17. District seeks an order that the June 6, 2014 psychoeducational assessment met all IDEA and state requirements. Pursuant to a stipulation filed on the first day of the hearing, Student disputes the assessment was appropriate "insofar as it is alleged the District failed to assess him in the area of dyslexia, verbal based learning/specific learning disability." Student contends District's June 6, 2014 assessment should have acknowledged that Student's specific learning disability was dyslexia. As discussed below, District demonstrated that the assessment was properly conducted.

Applicable Law

18. An assessment of a pupil who is receiving special education and related services must occur at least once every three years unless the parent and the school district agree that such a reevaluation is unnecessary. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a)(2).)

19. To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(l); Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable to the student, explain the assessments that the district proposes to conduct, and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(l)-(4).) A school district must give the parents and/or the student 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

20. The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the

producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

21. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: 1) whether the student may need special education and related services; 2) the basis for making that determination; 3) the relevant behavior noted during observation of the student in an appropriate setting; 4) the relationship of that behavior to the student's academic and social functioning; 5) the educationally relevant health, development and medical findings, if any; 6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and 7) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

22. A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, which manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (20 U.S.C. § 1401(30)(A); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd.(a).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities, including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(1). A specific

learning disability includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C. § 1401(30)(B); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a).) A student who is assessed as being dyslexic and who meets the eligibility criteria under the category of specific learning disability is entitled to special education and related services. (Ed. Code § 56337.5, subd. (a).) If a student who exhibits the characteristics of dyslexia or another related reading dysfunction is not found eligible for special education, then her instructional program shall be provided in the regular education program. (Ed. Code § 56337.5, subd. (b).)

23. In response to a request for an independent educational evaluation, an educational agency must, without unnecessary delay, either: 1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or 2) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c).)

Analysis

24. Here, District was required to file its due process request to defend its assessment within a reasonable time of Parent's request for an independent educational evaluation. There was no dispute as to procedural compliance with the assessment process. The dispute lies in whether Student should also have been found to have a specific learning disability in reading based upon a medical diagnosis of dyslexia.

25. In sum, the evidence demonstrated that District's assessment met all state and federal requirements. Student had proper notice of the assessment and Parents consented to the assessment by signing the assessment plan. Ms. Nguyen prepared the assessment plan and had the necessary qualifications and experience to conduct and interpret the psychoeducational assessment. The plan called for, and the assessors used, a variety of assessment tools including observation across educational settings, health

and educational records review, Student interview, Parents and teacher input, and standardized testing. Ms. Nguyen also reviewed work samples and assessed Student's skills through clinical observation. The assessors, Ms. Hilts, Ms. J Nguyen and Dr. Fitzsimmons, knew Student. They administered all assessments in Student's primary language of English, and used assessment instruments designed to provide cognitive information, and to consider behavioral and developmental factors, including attention and on-task ability. Assessment instruments were technically sound, used for valid and reliable purposes, and were not racially or culturally discriminatory. The assessors were trained and knowledgeable and administered tests according to the proper instructions. Student was able to complete the assessments independently even though there was some inattention and fidgeting during testing. Ms. Nguyen prepared a written report, recommending special education and related services due to a severe discrepancy between Student's cognitive ability and his academic achievement in spelling and written language. Ms. Nguyen's report fully described her findings and made recommendations for Student's IEP program. The report was provided to Parents and discussed at the June 6, 2014 IEP team meeting.

26. Dr. Hannauer may have believed her own assessment was better or more comprehensive than District's assessment, but her credibility was undermined by her testing, her written report and inconsistencies in her testimony. Whether Dr. Hannauer may have done more or different tests did not demonstrate that District's psychoeducational assessment failed to properly assess suspected disabilities in reading, written language and spelling. Although Dr. Hannauer was critical of District's failure to include dyslexia as Student's eligibility, her testimony did not demonstrate that District's assessment was inappropriate. Dyslexia was, by definition, included within the eligibility category of specific learning disability under Education Code section 56337, reading skills were fully assessed using a number of assessment tools, and all District educators

credibly testified that Student did not have deficits in reading. District demonstrated that its psychoeducational assessment, reported on June 6, 2014, was appropriate.

DISTRICT'S ISSUE 2: COST OF EDUCATIONAL RECORDS

27. District contends it was permitted to charge not more than the actual cost for reproducing copies of Student's educational records, 20 cents per page was less than the actual cost of reproducing the records and the cost did not effectively deny Parents copies of the records. Student contends OAH lacks jurisdiction over this issue and the issue is moot because Parents have obtained copies of the requested records.

Applicable Law

28. Education Code section 56504 gives parents an opportunity to examine all of their student's school records and to receive copies within five business days of parents' request for records. The section allows a public agency to charge parents no more than the actual cost of reproducing the records. However, if the cost of the records effectively prevents parents from exercising their right to receive copies, copies must be reproduced at no cost to parents.

29. OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029. Jurisdiction extends to procedural violations that infringe on the parents' opportunity to participate in the IEP decision making process for their children. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23, supra*, 960 F.2d 1479, 1484.)

Analysis

30. In this case, CDE determined District's March 20, 2014 per page copy charge was less than the actual cost of reproducing the copies, but that the charge effectively impeded Parents' right to the records. CDE's factual findings are entitled to

some weight, but are not binding on OAH. Here, CDE did not make factual findings as to whether Parents' rights were impeded by the cost to reproduce the records because that was not alleged in Student's complaint and no evidence was set forth in the investigation report. OAH has jurisdiction over the failure to provide educational records where the failure to provide educational records impedes parents' opportunity to participate in the decision-making process.

31. District made the records requested on March 20, 2014, and November 25, 2014, available within five business days of the request. The invoiced amount was less than the actual cost of reproducing the records. Student received the records requested on March 20, 2014, at no cost. Student's attorneys obtained and paid for the records requested on November 25, 2014. The fact that District sent an invoice for less than the actual cost to reproduce the records did not effectively prevent Parents from exercising their right to receive copies and the evidence showed that at no time were Parents prevented from accessing the records.

ORDER

1. All of Student's requests for relief are denied.
2. District's psychoeducational assessment was appropriate such that Student is not entitled to public funding of an independent educational evaluation.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section, the following finding is made: District prevailed on all issues heard and decided in this case.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision in accordance with Education Code section 56505, subdivision (k).

Dated: April 17, 2015

/s/

MARIAN H. TULLY

Administrative Law Judge

Office of Administrative Hearings