BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014120167

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on November 20, 2014, naming Oakland Unified School District. The matter was continued for good cause on January 5, 2015.

Administrative Law Judge Rebecca Freie heard this matter in Oakland, California, on April 14, 15, and 16, 2015.

Blanca Vaughan, Attorney at Law, represented Student. Jean Murrell Adams, Attorney at Law, a colleague of Ms. Vaughan's, also attended part of the hearing for observation purposes on April 14, 2015. Student's mother attended the hearing on all dates. There was a Spanish interpreter present interpreting the hearing throughout.

Melissa Phung, Attorney at Law, represented District. She was assisted on April 14, 2015, by Lenore Silverman, Attorney at Law. Geri Baskind, Director of Legal Support Services for Oakland's Programs for Exceptional Children, attended the hearing as Oakland's representative.

At the close of testimony, a continuance was granted for the parties to file written closing arguments and the record remained open until May 7, 2015. Upon timely receipt

of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES[1]

1) From November 21, 2012, through November 20, 2014, did Oakland deny Student a free appropriate public education by failing to assess him in all areas of suspected disability, specifically:

a) autism;

b) specific learning disability;

c) behavioral deficits;

d) social-emotional deficits;

e) attention deficit hyperactivity disorder;

f) occupational therapy issues; and/or

g) speech and language deficits?

2) From November 21, 2012, through November 20, 2014, did Oakland commit the following procedural violations which resulted in denial of a FAPE because Student was deprived of educational benefit and/or Oakland denied Parents meaningful participation in the individualized education program development process:

a) by failing to convene a timely triennial IEP team meeting between November 21, 2012, and November 20, 2014;

b) by failing to have required IEP team members at the IEP team meeting on October 13, 2014; and

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[1] The issues have been rephrased and reorganized 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.)

c) by failing to translate IEP documents into Spanish?

3) Did Oakland deny Student a FAPE by failing to provide him with goals, placement, and the related services of occupational therapy, speech and language therapy, and counseling, that met his unique needs, and would provide him with educational benefit from November 21, 2012, to November 20, 2014?

SUMMARY OF DECISION

This Decision finds that Oakland committed several procedural violations that significantly impeded Parents from participating in the decision making process regarding the provision of a FAPE, and thus impeded Student's right to a FAPE from November 21, 2012, through November 20, 2014. Oakland assessed Student in several areas as part of its psychoeducational assessment, including the areas of autism and attention deficit disorder, before an IEP team meeting in October 2012. Student did not show that he should have been reassessed in these areas during the relevant time period. There was no need to assess Student in the area of behavior because this was not an area of suspected disability. However, Oakland's school psychologist failed to assess him in the area of sensory processing, part of the assessment process when it is suspected that a student has a specific learning disability. Further, Oakland failed to assess Student in the area of social emotional deficits, occupational therapy, and failed to reassess Student in the area of speech and language when it became obvious that he was not making progress in meeting his speech and language goals. Oakland also failed to have one of Student's general education teachers attend the entire IEP team meeting on October 13, 2014. And it failed to translate IEP's and assessments into Spanish when it knew Mother was a monolingual Spanish speaker, and this resulted in Mother's inability to provide informed consent to the IEP's. These procedural violations denied Student a FAPE from November 21, 2012, through November 20, 2014, because they significantly impeded Parents' opportunity to participate in the decision-making process

regarding the provision of a FAPE to Student.

Student claimed that Oakland substantively denied him a FAPE by failing to provide him with goals, placement, and related services of occupational therapy, speech and language, and counseling. This decision finds that Student met his burden that he was denied a FAPE in the area of speech and language. However, he failed to present evidence to formulate a remedy for this. And, while Student met his burden to show that he should have been assessed for occupational therapy, Student did not meet his burden to show he had unique needs in the area of occupational therapy such that he was entitled to goals and occupational therapy services from November 21, 2012, through November 20, 2014. Student also did not meet his burden to show that he needed goals in any other areas of need, that his placement was not appropriate, or that he should have received counseling services.

FACTUAL FINDINGS

JURISDICTION

1. Student resides within the Oakland boundaries with Parents and siblings. Spanish is used by the family in the home and Student is bilingual. In 2007, shortly after his fourth birthday, Student was found eligible for special education under the eligibility category of speech and language impairment. He has always received speech and language services at school, with a focus in recent years in the area of social pragmatics.

STUDENT'S UNIQUE NEEDS

2. Student is currently 12 years of age and in the sixth grade at Alliance Academy (Alliance), a middle school in Oakland. He attended East Oakland Pride Elementary School (East Oakland) from kindergarten through fifth grade. Student began school in a bilingual kindergarten class, and was enrolled in bilingual classes through at least grade one.

3. During the time period at issue, Student was enrolled in general education classes, and he was pulled out of the general education classes into the resource specialist classes. For the 2012-2013 school year, he was pulled out once a week for 45 minutes. After an IEP team meeting on October 2, 2013, this pullout service was increased to twice a week for 45 minutes each session. An IEP team meeting on October 13, 2014, resulted in an increase in these services to pullout sessions three times a week, for 60 minutes each session. During the 2014-2015 school year, some of his resource services occurred during the writing portion of his English language arts class, and the resource teacher would work on his writing deficits.

4. Student also received speech and language services for 30 minutes per week to work on the social skills and expressive language goals in his IEP's for both the 2012-2013 school year, and the 2013-2014 school year. This time was increased to 45 minutes per week at the October 13, 2014 IEP team meeting. During the 2013-2014 school year, Student participated in a social skills program in another general education classroom as part of his speech and language therapy. There was no explanation as to why he received these services in a general education classroom that was not his usual class, or why these services were not provided in his own classroom with his classmates. Student's pullout services generally occurred during nonacademic class periods.

5. Student generally does well in school. He is especially talented in mathematics. Student loves to read, and has generally read at a level just below where he should be according to his grade in school. He has struggled with writing assignments, having difficulty organizing his ideas and producing grammatical sentences and paragraphs, and he struggles with critical thinking. There was no evidence that Student has had difficulty accessing the curriculum in his general education classes with the supports and services he received.

6. English language arts, social studies (world history), and science were

challenging for Student during the 2014-2015 school year. He had difficulty turning in homework in writing and social studies. Homework was work that was not completed during class, and failure to turn in homework had a negative effect on his grades. However, Student is attentive in classes, and does his best to complete work in class, particularly in math, his favorite subject.

7. Student's English and social studies teacher for this year, Alia Ghabra, began printing out copies of her lecture notes to give him since he had difficulty with note-taking in her classes due to writing slowly. At least one teacher claimed that this was because he was a perfectionist, but Ms. Ghabra's testimony established that handwriting is problematic for him, not that he is trying to be "perfect."

8. Student cannot tie his shoes, and Mother needs to make sure he bathes and fastens his clothing appropriately before he leaves the house. This has been an ongoing challenge for them.

9. Student is often solitary at school, and is rarely seen socializing with peers during unstructured time. It was observed by Ms. Ghabra that she has never seen him with a "friend or buddy." Teachers from the 2013-2014 and 2014-2015 school years credibly testified that he has significant problems warming up to other classmates, even though he has attended school with many of them in previous school years. This school year, he has been a fairly good participant in classroom small groups, speaks up when he needs help, and will sometimes take a leadership role in a group project. Still, he does better in smaller groups of two or three students rather than larger groups. Other than activities with extended family, such a cousin who is close to him in age but still does not like to play with him, Student has no social life outside of school, and is not engaged in any extracurricular activities other than an afterschool program. Mother hoped that participation in this afterschool program would help him socially, but there was no evidence that it has.

10. Although Student has social deficits, he does not demonstrate behavioral challenges at school. There was no evidence that he was ever the subject of discipline during the two year period at issue. Student is respectful to teachers and peers. Nor does he demonstrate any emotional issues in the school setting; he presents with a flat affect, for the most part, and does not have tantrums, outbursts or other maladaptive behaviors at school.

ASSESSMENTS

Westcoast Assessment[2]

11. In the fall of 2011, when he was in third grade, Student began an assessment at Westcoast Children's Clinic. He was referred for the assessment by Parents and Irene Kelly, M.D., the family practitioner who has been treating Student since birth. Parents were concerned that he might be autistic, and informed the assessor that they were concerned about his strange play habits, language delays, and a disinterest in playing with other children, as well as several other things. Dr. Kelly was concerned that he could not tie his shoes, dress himself or learn the alphabet, was not very social, could not follow stories or directions from his teacher, and would lose focus and express himself with flat affect.

12. Student was assessed by Madelyn Chatton, M.A., a bilingual psychology intern working on her doctoral degree, and she prepared a 23-page written report dated March 17, 2012. The report contains an additional six pages showing test results and an

[2] Although this assessment was done before the two-year statute of limitations (see Ed. Code § 56505, subd. (l)) began, to run, it was considered by Oakland's school psychologist when she did her own assessment which resulted in an IEP team meeting in October 2012. This IEP covered Student during part of the time period at issue.

explanation of scoring methods used with the various assessments she administered. She was supervised by Jessica Herbold, Ph.D., a clinical psychologist who met with her for at least one hour weekly and consulted with her at length concerning the testing and the written report, and testified credibly at hearing. As part of the assessment process Ms. Chatton reviewed records, and interviewed Parents, Student and his teacher. She also observed him in the school setting, and administered multiple assessment tools.

13. Ms. Chatton was cognizant of Student's bilingual status and the fact that Parents were monolingual Spanish speakers. Testing of Student that was language-sensitive was conducted in Spanish, and surveys completed by Parents were in Spanish.

14. Ms. Chatton used several assessment tools to assess Student. The testing and results were not at issue, so specific test instruments need not be addressed in this Decision. Ms. Chatton's assessment revealed that Student's nonverbal intelligence, based on subtest results from the Kaufman Assessment Battery for Children, Second Edition, resulted in a standard score of 136, in the upper extreme range, and the 99th percentile for children his age. However, Ms. Chatton's testing revealed that short-term memory was a weakness, as were auditory processing and fine motor skills.

15. Academic achievement testing was done in Spanish using the Woodcock Muñoz Tests of Cognition and Achievement and Ms. Chatton reported mixed results. She found that Student seemed to have difficulty associating letters with sounds as words became less familiar, and recommended that Student be provided with one-to-one assistance in the areas of reading, writing and language skills. The testing confirmed that Student also had a speech and language impairment, with significant expressive and receptive language challenges in both English and Spanish.

16. Testing specific to autism was administered including the Gilliam Autism Rating Scale, Second Edition, and the Social Communication Questionnaire, which were both completed by Mother. Reviewing the results of all the assessments, and using the

Diagnostic and Statistical Manual, Fourth Edition (DSM-IV) Ms. Chatton diagnosed Student as having Pervasive Developmental Disorder.

17. The DSM-IV was revised in 2013, and Pervasive Developmental Disorder was eliminated from the Diagnostic and Statistical Manual, Fifth Edition (DSM-V). However, the symptoms and characteristics Student exhibited during the 2011 testing that resulted in the diagnosis of Pervasive Development Disorder are included as part of the Autism Spectrum Disorder found in the DSM-V. Dr. Herbold credibly testified that the results of the Westcoast testing and assessment would result in a diagnosis of Autism Spectrum Disorder using the DSM-V today.

18. The Westcoast assessment did not indicate that Student had behavioral issues that were interfering with his education or other's education. Although the testing results revealed some attentional deficits, they were not so significant that they were interfering with his education. Student did not meet the DSM-IV criteria for Attention Deficit Hyperactivity Disorder.

19. Ms. Chatton also found that Student had a Developmental Coordination Disorder, based on his poor handwriting; results from the Beery-Butenica Visual Motor Integration, Visual Perception, and Motor Coordination Tests; and the Rey Complex Figure Test. Therefore, she recommended that Student have an occupational therapy assessment.

20. Ms. Chatton's report was written in English. However, it was Westcoast's practice to give summaries of reports to parents in their native language when they did not speak or read English. Dr. Herbold believed it was likely that a Spanish summary was provided to Parents. The report contained many recommendations relating to Student's home life, and a separate set of recommendations for Student's school district, which was Oakland.

21. The recommendations for Oakland included several that called for more assessment by the school. It was recommended that an assessment be conducted to see if he met the criteria for eligibility as a child on the autism spectrum. Further, it recommended that he receive a speech and language assessment in Spanish, his "dominant language." In addition there was a recommendation that he receive a "comprehensive learning assessment, specifically focused on auditory processing and language." An occupational therapy assessment was also recommended to look at his deficits in fine motor control and handwriting. Ms. Chatton anticipated that Student would be eligible for an IEP due to his numerous problems. Mother provided Oakland with a copy of the West Coast report in May 2012.

District's Assessments

22. Mother signed an Oakland assessment plan that was given to her after she provided East Oakland with the Westcoast report in May 2012. The plan called for assessments in the following areas: academic achievement, social/adaptive behavior, cognitive development, perceptual development, speech/language communication development, and health. In September 2012, Oakland conducted a psychoeducational assessment of Student; two speech and language assessments, one in English and one in Spanish; and an academic achievement assessment.

Psychoeducational Assessment

23. The psychoeducational assessment was administered by Lilia Magdaleno, M.S., who is bilingual in English and Spanish. She tested Student in four separate sessions in September 2012. Among the records she reviewed were a District assessment report dated July 5, 2007, and the Westcoast report. Mother was interviewed, as was Student's fourth grade teacher, Samuel Petty.

24. Student was assessed in the area of cognition using the Wechsler

Intelligence Scale for Children, Fourth Edition (Wechsler) in English, with the Verbal Comprehension Index subtest administered using the Spanish edition. Student was assessed for visual perception, visual motor integration and motor coordination using Bender-Gestalt, Second Edition (Bender-Gestalt) testing instruments. Student was also administered the Test of Auditory Processing Skills, Third Edition (Test of Auditory Processing) in both English and Spanish. However, he was not assessed in the area of sensory-motor skills. Formal observations of Student in the classroom, at lunch, and during recess were conducted, and another school psychologist used the Autism Diagnostic Observation Schedule (Autism Observation Schedule) to determine if Student would qualify for special education as a child with autistic like behaviors.

25. On the Wechsler, Student's standard score in the area of Perceptual Reasoning was 127, the superior range. However, his Verbal Comprehension scores on both the English and Spanish versions were in the well below average range, with a standard score of 75 on the English version, and 73 on the Spanish version. Ms. Magdalena concluded that this demonstrated that Student did not have a dominant language. These scores, combined with his above average standard score in processing speed of 115, and an average standard score of 107 in working memory resulted in a full scale intelligence quotient of 106 which is in the average range.

26. Student's processing was assessed. Student's scores on the Bender-Gestalt testing showed that Student has high visual-motor integration skills. This result was corroborated by Ms. Chatton's testing. Student's scores on both Spanish and English versions of the Test of Auditory Processing showed average results, generally. Ms. Magdalena did not find that Student had an auditory processing disorder, although like Ms. Chatton, she found that Student had stronger visual processing skills than auditory processing skills. Ms. Chatton's testing results in the area of auditory processing were inconsistent, with Student performing well on some of the subtests that measured

auditory processing. Student's teachers testified that he followed verbal instructions, and understood material presented verbally. Therefore, it is found that Student did not have an auditory processing disorder when tested by Ms. Magdalena.

27. Student was assessed in the area of autism. Mother completed the Social Communication Questionnaire Lifetime form as part of Ms. Magdalena's assessment. Her responses on this questionnaire showed a high probability that Student was on the autism spectrum; Mother's score was 23, and a score of 15 or higher is "an indication of possible [Autism Spectrum Disorder]." Similarly, the results of the Autism Observation Schedule, administered by another school psychologist, included an observation of "unusual sensory seeking behavior[,]" and the results of these assessments were used to support Ms. Magdalena's conclusion that Student met the criteria for special education eligibility as a child with autistic like behaviors. Ms. Magdalena recommended that an occupational therapist "follow up on [Student]'s fine motor skills."

28. Ms. Magdalena observed Student's behavior in class to see if he was having attentional difficulties. Like Ms. Chatton, she did not observe any attentional issues that were impeding his education. There were no behaviors present that would have led Oakland to complete a behavioral assessment for Student. As to Attention Deficit Hyperactivity Disorder, Oakland's classroom observations and testing of Student did not reveal that this was an area of suspected disability.

29. Ms. Magdalena provided Mother and Student's teacher with the Behavior Assessment Schedule for Children, Second Edition, a questionnaire that helps an assessor to determine if a child has social emotional deficits. Neither of them completed the assessment in time for Ms. Magdalena's written report. Althouth there was other testing related to autism, and observations, there was no formal assessment to determine if Student had other social emotional deficits.

Speech and Language Assessments

ENGLISH

30. Raquel Narain, M.A., a speech and language pathologist for Oakland conducted her testing of Student in English. She used the Clinical Evaluation of Language Fundamentals, Fourth Edition (Clinical Evaluation of Language); the Comprehensive Assessment of Spoken Language (Comprehensive Assessment); and the Social Language Development Test—Elementary (Social Language). The results of the first two tests, as related to Student's spoken communication, were generally in the average range, with lower scores attributed to Student's dual language status. However, the results of a subtest on the Comprehensive Assessment, which measured Student's ability to make inferences, resulted in a standard score of 61, a score in the below average range. Student scores on the Social Language test resulted in a total standard score of 66, the far below average range, which led to the conclusion that Student has a weakness in social pragmatics, and on this basis he would qualify for special education as a child with a speech and language impairment. Student was assessed in social pragmatics as part of the determination regarding autism because this area is often problematic for children with Autism Spectrum Disorder.

SPANISH

31. The Clinical Evaluation of Language Spanish version was administered to Student. The subsequent written report was prepared by Theresa Christiansen, M.A., a speech and language pathologist, and Marisela Isais, a speech and language assistant. Student's standard scores on all but one subtest were 82-83. That subtest, which measured maintaining attention to verbally presented paragraphs with increasing complexity, resulted in a standard score of 72. Other Spanish language paragraphs were read to Student and his poor score was considered to be a lack of understanding of

more complex Spanish vocabulary. No recommendations were made.

Academic Assessment

32. Danielle Simons, assisted by an interpreter, administered both the Woodcock Johnson Tests of Achievement Third Edition (Woodcock Johnson) in English, and the Woodcock Muñoz Third Edition, which is the Spanish equivalent of the Woodcock Johnson. Student's standard scores on the reading portion of the Woodcock Johnson, ranged from 81 to 116, with the high score in Letter Word Identification, and the low score in Passage Comprehension. Using the Woodcock Muñoz, Student's scores on the equivalent subtests in Spanish ranged from 85-143, with high and low scores on the same tests on which his scores were high and low on the Woodcock Johnson.

33. On the math portion of the Woodcock Johnson, Student had a standard score of 119 in Math Calculation, and 95 in Applied Problems. Scores were similar on the Woodcock Muñoz with a score of 112 in Calculation, and 88 in Applied Problems. On the writing portion of both tests, his spelling standard score was 116 in English, and 95 in Spanish. On the writing sample, his standard score was 50 on the Woodcock Johnson, primarily because he did not write complete sentences. On the Spanish version, his standard score on the writing sample was 99.

34. Student's wide range of scores on the Woodcock Johnson and Woodcock Muñoz, compared to his cognitive scores, are an indication that Student may well have a specific learning disability, and be eligible for special education as a child with a specific learning disability. Ms. Magdalena's assessment measured Student's cognitive abilities, and also assessed him for possible processing deficits, with the exception of testing for sensory-motor deficits. Ms. Simon conducted academic testing. Student was assessed in the areas of visual and auditory processing, attention, cognitive ability, and academic performance. These, along with sensory-motor assessment, are the components of an assessment to determine if a child has a specific learning disability.

Student's Need for Further Assessment

OCCUPATIONAL THERAPY

35. On the signed assessment plan, the category of "Other," which suggested "fine/gross motor" as one of the areas included in this category, was not checked, although the Westcoast report appears to have been the impetus for the assessment plan being prepared, and it recommended an occupational therapy assessment.

36. An IEP team meeting was convened on October 3, 2012. All of Oakland's assessments were reviewed by the team which included Mother. The Westcoast assessment was not, and it was unclear if anyone, other than Ms. Magdalena, ever reviewed this assessment. Ms. Magdalena now recommended that an occupational therapy screening be done, noting that Student had "sensory issues," although the notes from that IEP team meeting do not reflect what specifically was meant by "sensory issues." Ms. Simons reported that "Although [Student] has handwriting that is considered sloppy by teachers, he can grasp a pencil and write legibly. . . . [Student] is also able to play outside and run during recess. It appears that [he] has age appropriate gross and fine motor development." However, there was no evidence that Ms. Simons is an occupational therapist. There was nothing to indicate Mother had any input at that IEP team meeting regarding issues at home, such as problems fastening clothing or bathing, that might be further reason for an occupational therapy assessment. The IEP stated that there would be another IEP team meeting in one to two months to follow up on the occupational therapy screening.

37. On October 25, 2012, Olivia A. Flores-Bevineau, OTR/L (occupational therapist registered/licensed) completed a form titled "Occupational Therapy Observation Form." It is stated that Mother referred him for the screening. There is no mention of any input from Ms. Magdalena. Student's teacher (who was excused from the IEP team meeting of October 3, 2012, due to illness) purportedly told Ms. Flores-

Bevineau that she "does not have any concerns regarding Roxana's ability to complete fine motor, self help or handwriting activities." Student's name is not Roxana.

38. A classroom observation was apparently conducted by Ms. Flores-Bevineau, and she noted that Student did not exhibit any issues with handwriting or use of scissors. It was noted that he had problems with spacing when he was writing his own sentences and not copying. Under a heading, "Self-help," it stated that Student exhibited appropriate functioning with fasteners and hand-washing, and he could put on his jacket. Under the "Sensory Processing" heading, it was noted that he had sensory processing issues that impacted his education, but these issues could be addressed within the classroom. There was no description of what these issues were, or how they could be addressed within the classroom. There was no evidence that Ms. Flores-Bevineau ever spoke to Mother. A box that said "School occupational therapy assessment *not* recommended" was checked on the form.

39. There was no evidence that Mother ever received a copy of this form, either in English or translated into Spanish. The next IEP team meeting was held in April 2013, but the occupational therapy screening form was not reviewed at that meeting, nor was occupational therapy discussed. None of the subsequent IEP documents mention this screening or form. At hearing Mother admitted that she does not know what occupational therapy is, so it is understandable that she did not follow up on this.

40. On August 22, 2014, Dr. Kelly sent a note to Student's school asking that an occupational therapy assessment "be considered" because he could not tie his shoes and "needs help bathing, etc." Dr. Kelly knew Student could not tie his shoes because every time she has examined him since he was seven years old she has asked him to tie his shoes and he cannot. The information about bathing was credibly corroborated by Mother during her testimony at hearing.

41. On September 12, 2014, a prior written notice signed by the Alliance case

manager for Student, Lorrain Savatone, and Susan Dalpino, occupational therapist, was issued denying the request for an occupational therapy assessment. The prior written notice states "An Occupational Therapy evaluation to address self help skills, per MD request, is not educationally necessary." It also reports that in a telephone conversation with Mother on the same date she "stated motor skills related to self care needs are not an issue for [Student]." Mother contradicted this information during her testimony, and was credible when she testified that Student had to be reminded to bathe, and that if she did not check him before he left for school, his clothing would be fastened incorrectly. There was no evidence that Mother received this prior written notice in either English or Spanish before the IEP team meeting of October 13, 2014, and occupational therapy was not discussed at this meeting.

Speech and Language

42. At the IEP team meeting of October 3, 2012, two social skills goals and one expressive language goal were developed, and they were to be the responsibility of Student's speech and language therapist. At IEP team meetings on October 2, 2013, and October 13, 2014, it was reported that Student failed to meet each of these goals.

43. One of the social skills goals developed at the October 3, 2012 IEP team meeting called for Student, "when given an orally presented scenario, . . . to be able to identify two appropriate solutions to a problem and justify his answers with 80 % accuracy on 3 out of 5 trials during three consecutive sessions as measured by teacher observation and/or data collection."

44. Another goal in the area of social skills concerned the identification of nonverbal social cues. This goal called for Student to "identify and explain the meanings conveyed by communication skills such as non-verbal gestures and facial expressions with 100% accuracy on 3 out of 5 trials during 3 consecutive sessions with the therapy

setting as measured by teacher observation and/or data collection." [3]

45. The expressive language goal developed by the IEP team on October 3, 2012, called for Student to "answer inferential questions and identify key words which lead him to the answer with 70 % accuracy on 3 out of 5 trials over 3 consecutive sessions as measured by teacher observation and/or data collection."

46. A progress report was issued on June 5, 2013, showing that Student was making good progress on the first and third goals; but progress was less pronounced on the second goal. At the IEP team meeting on October 2, 2013, the speech and language therapist (a different one than the speech and language therapist who had served Student the previous school year) reported actual regression on the goals since June 5, 2013. However, the goals were simply renewed in the IEP developed at that meeting.

47. At the IEP team meeting on October 13, 2014, it was reported that once again Student had made virtually no progress on any of these goals since the previous year's IEP team meeting. Yet the first social skills goal and the expressive language goal were simply repeated in the IEP for October 13, 2014. The second social skills goal was dropped and a new social skills goal was added. The new goal required Student to "maintain a conversation with a peer about a grade appropriate topic by asking and answering questions while using appropriate intonation for at least 4 reciprocal turns 80% of the time in 3 out of 4 opportunities when provided with no more than one cue." There was no discussion at any of the IEP team meetings about further assessing Student in the area of speech and language, despite his continued lack of expected

[3] It is believed this goal was intended to read to "identify and explain the meanings conveyed by communication skills such as non-verbal gestures and facial expressions with 100% accuracy on 3 out of 5 trials during 3 consecutive sessions with[in] the therapy setting as measured by teacher observation and/or data collection."

progress, year after year.

ALLEGED PROCEDURAL VIOLATIONS

"Triennial" IEP Team Meeting

48. Student was initially made eligible for special education in 2006 as a child with a speech and language impairment. He was offered a preschool placement but this was declined by Mother. He began attending school in 2007 in kindergarten, and received speech and language therapy, as well as resource specialist services. During the 2008-2009 school year, resource specialist services were discontinued, although some form of speech therapy services continued. At that time, Oakland exited Student from special education and no further IEP's were developed until 2012.[4]

49. Each party submitted a document referred to as the IEP of October 3, 2012, and although the multipage documents are similar they are not identical. The differences in the documents are not relevant to the issues in this case.

50. The first page of each IEP contains boxes near the top that are to be checked as appropriate to designate whether the IEP is Initial, Annual, Triennial, Transition, Interim or other. On the first page of both copies of the IEP of October 3, 2012, the box for "Initial" is checked. A copy of the form Mother signed in May 2012, consenting to Oakland assessing Student is part of both October 3, 2012 IEP's admitted into evidence. Both state that the assessment is an "initial" assessment.

51. The IEP notes do not reflect any discussion concerning Student's progress on previous goals, nor are there any goal pages containing progress information. Rather, the two pages with goals appear to be initial goals formulated before the IEP

[4] No finding is made as to the appropriateness of exiting Student from special education when he was still receiving speech and language services.

team meeting by Oakland personnel, and related to weaknesses Student showed during the various assessments performed by Oakland staff.

52. On the first page of the IEP's of October 2, 2013, and October 13, 2014, the box designating that the IEP is an Annual IEP is checked. In the section titled "Present Levels of Academic Achievement and Functional Performance" progress on each of the previous years' goals is stated. The notes from both years' IEP's reflect a discussion of previous years' goals. All of the IEP documents were in English. Since Student was exited from special education in the 2008-2009 school year, the 2012 assessment is considered an initial assessment and the IEP team meeting that followed was an initial IEP team meeting. The 2013 and 2014 were annual IEP team meetings. Student's triennial assessment is not required until October 2015.

Absence of General Education Teacher

53. Student is enrolled in general education classes for the most part, and is pulled out of these classes to receive speech and language therapy and resource specialist services. Ms. Ghabra, Student's general education teacher for English and Social Studies, came to the IEP team meeting of October 13, 2014. However, she only stayed for 10-15 minutes. It is unclear from the notes, and from her testimony, which part of the IEP team meeting she attended. There is nothing in the IEP from that meeting that shows that Mother waived in writing the presence of a general education teacher. Nor was any other evidence presented to establish such a waiver. Testimony established that after Ms. Ghabra had spoken about Student's progress in her class she asked if she could be excused and Mother said she could. Ms. Ghabra then left the meeting. No other general education teacher attended the IEP team meeting. Student did not make any other allegations concerning the lack of required attendees at the IEP team meeting, other than the general education teacher.

Spanish Translation of IEP's and Other Documents

54. Mother has been concerned about Student's education for many years. However, it was clear during the hearing that she does not have much understanding of the IEP process. She is a monolingual Spanish speaker. Oakland provided her with a Spanish-English interpreter at all IEP team meetings, and OAH provided her with a Spanish-English interpreter for the due process hearing. The interpreter at the IEP team meeting would translate the conversation that occurred during the meeting. However, it did not appear that the IEP document was translated word-for-word by the interpreters during the IEP team meetings, although the notes taken during the IEP team meeting were translated to Mother at the end of the meeting. Writing goals for the IEP team meeting in October 2014, were translated into Spanish on the IEP, and a few minor portions of the Spanish speech and language evaluation in 2012 were written in Spanish on that IEP. Mother was given a Spanish version of the special education procedural safeguards at each IEP team meeting.

55. The preponderance of the evidence established that Mother received translated IEP's in the early years of Student's eligibility for special education as a child with a speech and language impairment, but not after he was exited from special education during the 2008-2009 school year.

56. One of Oakland's witnesses testified that a Spanish speaker at East Oakland claimed that Mother was "on the verge" of learning English. However, nothing occurred during the hearing, both on the record and off the record, to substantiate this evidence that Mother understood or could speak English. Nor was there any evidence that Mother could read English, although she can read Spanish. Accordingly, it is found that Mother does not speak, understand, or read English.

57. Mother's demeanor and affect were closely observed by the ALJ during her testimony, and at other times during the hearing. She is quiet and reserved, and

initiated little, if any conversation during breaks in the hearing. Many participants in the hearing, including her attorney and Ms. Baskind, appeared to be fluent in Spanish, and there were many conversations in Spanish during breaks in the hearing, but Mother's participation in these conversations was quite limited. The notes from the IEP team meetings in October of 2012 and 2013, reflect little input from Mother. Further, when Mother testified about Student's speech and language services, it appeared that she was unaware that the services he was receiving were related only to social skills. She believes he needs services because he has difficulty remembering whether nouns in Spanish are masculine or feminine.

58. There was no evidence that Oakland provided Mother with translated copies of its assessments. The evidence during the hearing established that the only documents Mother received in Spanish during the IEP process at issue in this matter were notices of IEP team meetings and the procedural safeguards document. The evidence established that during the October 13, 2014 IEP team meeting, the interpreter interpreted what was said during the meeting but did not translate the IEP as it was discussed during the meeting. Nor was the document verbally translated to her at any other time. The evidence established that the same was true at the IEP team meetings of October 3, 2012, and October 2, 2013. Mother credibly testified that no one else in in the home could translate the IEP's for her.

59. Mother signed consent to the IEP's of the October 3, 2012 and October 2, 2013 IEP team meetings, at the end of each of those meetings. However, at the IEP team meeting of October 13, 2014, Mother asked that she be allowed to take the IEP with her so she could consult with her advocate before signing consent. When she returned the IEP the next day she had signed consent, but had written a note in Spanish on the consent page which translated to "I need somebody to explain to me this program. I still have questions, many questions, and I need to help my child—my son."

60. A few days later Student's speech and language therapist, who was Student's case manager, telephoned Mother twice to arrange a meeting, but no one answered the phone, and no message was left. The third telephone call was answered by Father, but Mother did not receive the message from him. On October 20, 2014, when she went to pick up Student from school, the speech therapist saw Mother and called her into her office to ask if she had questions. Student was with Mother at the time. Mother asked if Student would now receive speech and language therapy for 45 minutes weekly, and this was confirmed by the speech and language therapist. Mother stated that she had no other questions about the IEP.

SUBSTANTIVE DENIAL OF A FAPE

IEP Goals

61. In addition to the speech and language goals addressed above, Student had needs in the area of written expression. The October 3, 2012 IEP, contained a writing goal that required him to write a five paragraph essay. At the time the IEP was drafted, he was only able to write single sentences. Student made substantial progress on this goal, as reported at the IEP team meeting of October 2, 2013. The IEP team then drafted two different goals in the area of written expression, one of which required him to write a longer, more complex essay, and another aimed at improving his skills in the area of editing his own writing. At the IEP team meeting on October 13, 2014, it was reported that Student had partially met these goals, and two different written expression goals were drafted. Student did not dispute the appropriateness of any of the writing goals, which addressed his deficits in written expression.

62. At hearing, Student presented no evidence that he disputed his placement in general education classes. He presented no evidence that the pullout resource services were inadequate. His report card for the 2012-2013 school year shows that he

met or exceeded all fourth grade standards, with the exception of English Language Development where he was below standards in all areas. Student's fifth grade report card for the 2013-2014 school year shows him generally meeting most standards, at either the Basic Approaching level, or the proficient level. His sixth grade report card from Alliance dated October 13, 2014, shows him receiving grades of A, B, and C. His C grades were in English and World History, subjects where writing is important. Finally, although Student claimed in his complaint that he required counseling for the time period at issue, in order to be provided with a FAPE, he presented little, if any evidence that showed a need for counseling.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA[5]

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)[6] 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 free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, 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).)

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

[6] All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 individualized education program. (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) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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 1997, 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. 951, 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) & (f); 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, § 56502, 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); Ed. Code, § 56505, subd. (l).) 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. 49, 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].)

ISSUE 1: FAILURE TO ASSESS IN ALL AREAS OF SUSPECTED DISABILITIES

5. Student contends that he required assessment in the areas of autism,

specific learning disability, behavioral deficits, social-emotional deficits, attention deficit hyperactivity disorder, occupational therapy issues, and/or speech and language deficits and that Oakland did not conduct assessments in these areas.

6. Oakland claims that it did assess him in all areas of need when it conducted its assessments in the fall of 2012, and there was no evidence that Student required further assessment at that time or since. Oakland argues that Student did not demonstrate any educational need for an Occupational therapy assessment. Oakland did not address whether or not Student required further speech and language assessment in its closing brief.

Assessment Requirements

7. A school district's failure to conduct appropriate assessments, or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

8. Assessments are required to determine eligibility for special education, and what type, frequency and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility, and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related services needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

Procedural Violations

9. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Id.*at 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Meaningful Parental Participation

10. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses 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 v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Specific Learning Disability Eligibility Criteria

11. Eligibility under the category of specific learning disability means first that a pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C. §1401(30); Ed. Code, § 56337, subd. (a).) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(1) [Several special education regulations were rewritten and renumbered effective July 1, 2014, including section 3030. Specific learning disability is now described in title 5, section 3030, subdivision (b)(10), and changes have been made in the wording. The previous regulations are cited because they were in effect when Oakland assessed Student, and held the IEP team meeting to discuss the assessments in 2012].)

12. If a student can be assessed using standardized achievement tests to measure his levels of academic competence, a severe discrepancy of at least 1.5 standard deviations must be found between the cognitive ability of the pupil and his or her academic achievement. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(4).) No single test instrument shall be used; the discrepancy must be corroborated by other data, including tests, scales, instruments, work samples and observations. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(4)(A).) Specific learning disability does not include learning problems that are primarily the result of visual, hearing or motor disabilities; intellectual disability; emotional disturbance; or of environmental, cultural, or economic disadvantage. (Ed. Code, § 56337, subd. (a).) Eligibility criteria also require a student to be unable to access

the curriculum without specialized academic instruction. ((Ed. Code § 56026, subds. (a), (b).)

13. Under the IDEA, only children with certain disabilities are eligible for special education. (20 U.S.C. § 1401(3)(A); Ed. Code § 56026, subd. (a).) For purposes of special education eligibility, the term "child with a disability" means a child with [intellectual disability], hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, requires instruction, services, or both, which cannot be provided with modification of the regular school program. (20 U.S.C. § 1402(3)(A)(ii); 34 C.F.R. § 300.8(a).) Similarly, California law defines an "individual with exceptional needs" as a pupil who is identified by an IEP team as "a child with a disability" pursuant to 20 U.S.C. section 1402(3)(A)(ii), and who requires special education because of his or her disability. (Ed. Code § 56026, subds. (a), (b).) Therefore, school districts are required to assess to determine eligibility, not for a diagnosis.

Analysis

14. Student did not present any evidence disputing the validity of the assessments Oakland completed in 2012, nor did he contend that these assessments were not legally compliant. Rather, his claim centers on assessments he believes should have been conducted but were not. Student did not claim that he should have been found eligible under any specific categories based upon Oakland's assessments. Therefore, this decision will look at the narrow issue pled of whether Oakland assessed in the areas at issue, and not whether the assessments were legally compliant or came to the appropriate conclusions.

AUTISM

15. As a part of her psychoeducational assessment of Student in the fall of 2012, Ms. Magdalena reviewed the Westcoast assessment, observed Student in several school settings, had another school psychologist conduct observations of Student using the Autism Observation Schedule, and had Mother complete the Social Communication Questionnaire Lifetime form. All of these actions, as part of the assessment process, were part of determining whether Student met the criteria as a student with autism for purposes of eligibility for special education and to determine any needs Student may have in the areas assessed. The information gleaned from these sources led Ms. Magdalena to conclude that Student did meet the eligibility criteria as a child with autistic like behaviors. This conclusion was bolstered by the speech and language testing which showed Student deficient in pragmatic language skills, another symptom of autism. Oakland was not required to determine whether Student could or should be medically diagnosed with Autism. Student was assessed in the areas of autism for purposes of special education. He did not meet his burden of proof that he required reassessment in this area prior to the District's obligation to reassess Student three years after the initial October assessment, which would be in October 2015.

SPECIFIC LEARNING DISABILITY

16. Student claims that he was not assessed in the area of specific learning disability. The evidence supports that contention because Student was not fully assessed to determine if he had a processing disorder. There are three components of specific learning disability that need to be assessed to determine whether any student meets the criteria for specific learning disability under special education law. It must be determined whether the student has a processing disorder, what his cognitive ability is, and his academic achievement. The law also requires that there be an observation of Student in the classroom.

17. Ms. Chatton tested Student to determine if he had processing deficits in the areas of attention, visual processing, auditory processing, and cognitive abilities including association, conceptualization and expression. Her opinion that Student had an auditory processing disorder was considered by Ms. Magdalena, who then administered tests to assess Student's auditory processing. Student's attention was determined not to be a factor which affected his education. He did not show that he had deficits in visual processing, or cognitive abilities including association, conceptualization and expression. Student's academic achievement was assessed and he was observed by the school psychologist, in the classroom, as required. However, Student was not assessed in the area of sensory-motor processing, and Student did show a need for assessment in this area, which was not addressed in the October 2012 assessment or in any assessment since. Since Student was not assessed in all areas of processing, including the area of sensory-motor processing, he was not assessed fully in the area of specific learning disability.

Behavior

18. There was no evidence at all that Student presented with maladaptive behaviors in the school setting. Rather the evidence established that he was well-behaved, followed rules, and was respectful to teachers and peers. There was no evidence that Student required additional assessment because he had behavioral issues and Student did not meet his burden to show that this was an area that Oakland should have assessed either in the initial assessment in 2012 or in 2013 or 2014.

Social Emotional

19. The assessments completed by Oakland in the fall of 2012 did not cover social emotional deficits, other than testing in the area of autism. Ms. Magdalena gave the Behavior Assessment to Mother and Student's teacher, but neither completed them.

There were no other tests administered by Ms. Magdalena that measured social emotional deficits, other than those related to autism. Student met his burden to show that there were social emotional areas that Oakland should have assessed.

Attention Deficit Hyperactivity Disorder

20. Oakland was not required to determine whether Student has a medical diagnosis of Attention Deficit Hyperactivity Disorder, as this is a medical diagnosis. Therefore, Oakland did not fail to assess Student to determine whether he has Attention Deficit Hyperactivity Disorder. To the extent that Student argues that Oakland failed to assess Student's attention issues, Student did not meet his burden because this area was assessed. Both Ms. Chatton and Ms. Magdalena found that Student had some attention issues. Student was observed in class and Oakland determined that the attentions issues were not interfering with his education and did not need further assessment. Student presented little evidence to the contrary. Student did not meet his burden to show that his attention should have been more thoroughly assessed in March 2012, or that Oakland should have assessed Student in this area in 2013 or 2014.

Occupational Therapy

21. Ms. Chatton recommended in her report that Student be assessed in the area of occupational therapy, but the assessment plan prepared by Oakland after it received that report did not call for such an assessment to be done. Ms. Magdalena wrote in her report that Student had sensory issues that should be "followed up" by an occupational therapist, but at the IEP team meeting on October 3, 2012, she suggested an occupational therapy screening, not an assessment. Although the occupational therapist who conducted that screening two weeks later claimed that Student had no difficulties with writing, Ms. Ghabra credibly testified that Student writes so slowly when taking notes, she gives him her lecture notes so he will not need to take notes. This may

be due to a deficit in fine motor skills, but an occupational therapy assessment would need to be conducted to see if this is the case.

22. When she completed her screening form in October 2012, Ms. Flores-Bevineau claimed that Student had no self-help issues, since he was able to put on his jacket and wash his hands. However, there was no indication that she ever spoke to Mother about issues at home that might indicate a need for occupational therapy in the educational setting, such as Student's inability to tie his shoes. And even when Dr. Kelly asked that Student be assessed for occupational therapy nearly two years later due to his inability to tie his shoes and bathe himself, the attitude expressed in the prior written notice indicates that since this is not something related to education, it need not be addressed in the school setting. However, one of the functions of special education is to prepare students with disabilities for "independent living." (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).) If Student does in fact have difficulty dressing, whether due to fine motor issues, or motor planning issues, this may create problems when he is enrolled in physical education classes where it is expected that he will "dress out" for gym. Without an occupational therapy assessment, however, it cannot be determined whether there are issues in this area which may be impacting him in the educational setting as he is now older.

23. Ms. Magdalena also believed that Student had sensory processing issues as a child on the autism spectrum, which is why she wanted "follow up" by an occupational therapist. The screening by Ms. Flores-Bevineau merely acknowledges that Student has sensory issues, but does not say what they are, and says they can be addressed in the classroom, but does not say how. This is not an adequate explanation as to why a full-blown occupational therapy assessment was not necessary. Lastly, Ms. Flores-Bevineau claims she received information from Student's teacher indicating he did not have fine motor, self-help or handwriting problems. However, this appears to be

a sentence from the screening of another student that was cut and pasted from another form, and thus is suspect and not given any weight. Oakland should have conducted an occupational therapy assessment and it did not, and this significantly impeded Mother from meaningful participation in the IEP development process. Without information from an occupational therapy assessment, one could not determine if he needed goals and services in this area. Further, such an assessment could reveal sensory-motor processing issues that need to be addressed, and could be an indication of a specific learning disability.

Speech and Language Impairment

24. Student made progress on the social skills and expressive language goals during the 2012-2013 school year. However, his lack of progress and even regression between the end of the 2012-2013 school year until the IEP team meeting of October 2, 2013, is concerning. Even more concerning is putting the exact same social skills goals into the IEP of October 2, 2013, and not realizing at least halfway through the 2013-2014 school year that he still was not making progress on them. He is a child with at least average intelligence and failure to make any real progress on these goals should have led his speech and language therapist to request further assessment to determine why progress was not being made, and to help inform the IEP team as to whether more or different interventions may be necessary. With more information, the IEP team could have met again and created more realistic goals, and/or different strategies to work on goals in the area of social pragmatics. At the IEP team meeting on October 13, 2014, it was revealed that Student still had not met any of the three goals, nor had he made any progress in meeting them. Yet one of the social skills goals, and the expressive language goal were again put into the October 13, 2014 IEP, without any changes. Even with speech and language goals that addressed social pragmatics being worked on since October 3, 2012, Student still has no friends and has difficulty in social situations,

although he is working well with others in the classroom.

25. Student needed further evaluation in the area of speech and language, specifically in relation to social and expressive language skills, and Oakland failed to conduct further assessment in that area. Due to this, Mother was significantly impeded from meaningful participation in the IEP development process. The lack of further assessment in the area of speech and language, when Student was not making progress on meeting his social skills and expressive language goals, made it unlikely that new, more realistic goals could be developed, and/or new and more successful strategies for teaching Student social skills could be developed.

26. The evidence established that Student required assessment in the areas of sensory-motor processing, social emotional deficits, occupational therapy, and further assessment in the area of speech and language. These were procedural violations which impeded Student's right to a FAPE, significantly impeded Mother from meaningful participation in the decision-making process regarding the provision of a FAPE to Student, and caused Student to be deprived of educational benefits. Thus Student was denied a FAPE.

ISSUE 2: PROCEDURAL VIOLATIONS

27. Student contends that Oakland committed procedural violations by failing to hold a triennial IEP team meeting between November 21, 2012, and November 20, 2014, not having a general education teacher in attendance at the October 13, 2014 IEP team meeting, and not translating IEP documents for Mother into Spanish.

28. Oakland claims it was not obligated to hold a triennial IEP team meeting during the time period at issue because the October 3, 2012 IEP team meeting was the triennial evaluation and the IEP was mismarked, and a triennial meeting is not due to be held until October 3, 2015. Oakland argues that there was a general education teacher at the IEP team meeting of October 13, 2014, and she was excused early from the

meeting by Mother. Lastly, Oakland claims that it was not required to translate IEP documents if Mother did not ask that they be translated.

"Triennial" IEP Team Meetings

29. 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).) The IEP team meeting held after the triennial reevaluation is often referred to as the triennial IEP team meeting. However, there is no legal difference between what is commonly called a triennial IEP team meeting and an annual IEP team meeting, and there is no legal requirement to hold anything called a triennial IEP team meeting.

Analysis

30. Student's argument that Oakland was required and failed to hold a triennial IEP team meeting, and that this was a procedural violation, fails. Student provided no legal authority that there is anything in the law that sets out a distinctive IEP team meeting as a triennial meeting. There cannot be a procedural violation where there is no federal or state requirement that is not being met.

31. The law requires assessment at least every three years. After assessments are completed, an IEP team meeting must be held to review the assessments. Although this meeting is commonly called a triennieal IEP team meeting, this meeting is no different than any other IEP team meeting. IEP team meetings must be held every year, and more often if certain conditions apply. The October 2012 IEP team meeting was an initial IEP team meeting that included a review of the assessments Oakland had completed. The IEP team met every year after that. Even if Student's claim was construed in the most liberal manner and showed that there is a procedural violation that occurs if

the IEP team does not meet after conducting a triennial assessment of a student, the time for that meeting simply has not yet passed. Student is not required to be assessed for his triennial assessment until October 2015. There is no statute or regulation, federal or state, requiring a triennial IEP team meeting above and beyond the meetings that have already been held for Student since October 2012.

Participation of a General Education Teacher at an IEP Team Meeting

32. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].) In California, if the student is participating in general education classes, it is expected that a general education teacher will be part of the IEP team during the process of developing the IEP, and the discussion of modifications, supports and services, as well as other strategies. (Ed. Code, § 56341, subd. (b).)

33. In *M.L. vs Federal Way School District* (9th Cir. 2003) 394 F.3d 634, the Ninth Circuit Court of Appeals found that the exclusion of a general education teacher from the IEP team meeting was a major procedural violation, that significantly impeded parents from meaningfully participating in the IEP development process. In California, parents must consent in writing when they excuse the presence of a general educational teacher from an IEP team meeting. (Ed. Code § 56341, subd. (g).)

Analysis

34. Ms. Ghabra is a general education classroom teacher, and taught Student world history and English during the 2014-2015 school year. She attended the October 13, 2014 IEP team meeting, but did not stay for the entire meeting. She testified credibly that after she had spent 10-15 minutes at the IEP team meeting she asked to be excused, and Mother consented to this happening. Mother was not asked to sign a written waiver consenting to the absence of a general education teacher from the IEP team meeting, nor did she do so. She was not told she could refuse to excuse the general education teacher.

35. The IEP document itself reflects that the time Ms. Ghabra spent at the IEP team meeting was when the team was discussing Student's present levels of academic achievement and functional performance. However, the entire meeting lasted at least one hour, and Ms. Ghabra was not present to discuss the accommodations and modifications Student needed in the general education setting, or the development of goals for Student for the coming year. This was particularly important since she was his English language arts teacher, and two of his five goals were in the area of written expression. There were no other general education teachers at the IEP team meeting. Oakland did not follow the appropriate process for excusing the general education teacher from the meeting, and this was a procedural violation which impeded Student's right to a FAPE, significantly impeded Mother's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and caused Student to be deprived of educational benefits. Thus Student was denied a FAPE. This is because the input of a general education teacher was important not only during the part of the meeting in which his academic achievement and functional performance was discussed, but during the rest of the meeting. Ms. Ghabra would have assisted the team in determining the accommodations and modifications Student required in the general

education classroom. She certainly would have provided vital assistance to the team in the drafting of the two writing goals since she was his English language arts teacher.

Translation of Documents

36. "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist*. (2007) 550 U.S. 516, 524 [127 S.Ct. 1994]. Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County School Dist*. (9th Cir. 2001) 267 F.3d 877, 882.)

37. In order to ensure that parents understand the IEP proceedings, a school district is required to "take any action necessary." (Ed. Code § 56341.5, subd. (i).) Federal regulations also require school districts to ensure parental participation in the IEP process. (34 C.F.R. § 300.322.) Further, although the federal regulations do not encourage the preparation of a draft IEP, it is noted in the comments to the proposed implementing regulations for the 2005 version of the IDEA, that if a draft IEP is prepared prior to the IEP team meeting, it should be provided to the parents prior to the date of the IEP team meeting to help the parents be prepared to fully participate. (71 Fed.Reg. 46678 (2006).)

38. If a parent requires some type of reasonable accommodation to enhance her participation so that it is meaningful, a school district must provide the parent with the reasonable accommodation. In 1990, the federal court in Connecticut ruled that parents could record IEP team meetings if it was necessary for the parent to be able to meaningfully participate in the IEP process. In *E.H. v. Tirozzi* (D.C. Conn. 1990) 735 F.Supp. 53, the parent was a non-native English speaker who had trouble following along in IEP meetings and wanted to listen to the recording later to familiarize herself with what had happened, and to better understand special education law. Although one or more of the other participants objected, the court ruled that the parent should be

allowed to record the IEP team meetings since it assisted her in understanding the proceedings, and enabled her to better participate. In *V.W. v. Favolise* (D.C. Conn. 1990) 131 F.R.D. 654, the parent had "a disabling injury to her hand that [made] note-taking difficult." (*Id.* at 657.) Therefore she was permitted to record IEP team meetings.

39. Local educational agencies "shall take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians . . . whose native language is other than English." (Ed. Code, § 56341.5, subd. (i); see also 34 C.F.R. § 300.322(e).) The local educational agency shall also "give the parent or guardian a copy of the individualized education program, at no cost." (Ed. Code, § 56341.5, subd. (j); see also 34 C.F.R. § 300.322(f).)

40. California has clarified that the obligation to ensure that a parent or guardian understands the proceedings extends to the IEP documents themselves, which must be provided to the parent in his or her primary language upon request. Section 3040, of title 5 of the California Code of Regulations, subdivision (a) states that "The LEA shall give the parent or guardian a copy of the IEP in his or her primary language at his or her request." This version went into effect July 1, 2014. The previous version of section 3040 in effect at the time of the October 3, 2012, and October 2, 2013 IEP team meetings, also calls for a copy of the IEP to be provided to the parent in his/her primary language upon request.

41. Parents are also required to give informed consent to an IEP. Informed consent is defined as consent obtained after the parent has been informed of all information relevant to the activity for which consent is sought in his or her native language. (Ed. Code, § 56021.1, subd. (a).) An IEP offer must be sufficiently clear that a parent can understand it and make intelligent decisions based on it. (*Union School Dist. v. Smith* (9th Cir. 1993) 15 F.3d 1519, 1526 (*Union*).) In *Union*, the Ninth Circuit observed

that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously.

42. The issue of translating IEP's into a parents native language has been addressed in several OAH Decisions. The determination of whether IEP's should have been translated is fact-specific. For example, in *Student v. New Haven Union School District*, (SEA Cal. 2010) 110 LRP 44200, the ALJ found that failure to provide parents with a translated copy of an IEP, although they had not requested it, resulted in a denial of a FAPE because parents were unable to provide informed consent. However, in *Vista Unified School District,* (SEA Cal. 2014) 114 LRP 130, another ALJ found that although the mother had asked the district for IEP's translated into her native language, and the district had not provided them, she was not denied meaningful participation in the IEP process. This was because father was a fluent English speaker who translated the documents for her, and through an interpreter the mother actively participated in the IEP team meetings, to which she was accompanied by the father.

Analysis

43. Mother is a native Spanish speaker. She does not speak, write or understand English. The provision of IEP's to Mother in English, without translating them, significantly impeded her right to meaningfully participate in the IEP development process, and to give informed consent to the IEP's of 2013 and 2014. She could not refer to these multi-page documents during the course of the school year to see what goals Student was working on, and to be able to ascertain herself whether he was making progress. She could not look with understanding at the accommodations and modifications to which he was entitled so that she could ensure that they were being provided to him during the course of the school year. She could not prepare for IEP team meetings by reviewing the previous IEP, ahead of time, and formulate questions about Student's progress that she could pose during the meeting. Because she did not

have translated copies of the IEP, she could not understand that Student had stopped making progress on his social skills and expressive language goals after the end of the 2012-2013 school year, and that those identical goals were being made part of the next IEP. Instead she could only rely on her recollection of the interpretation provided during the IEP team meetings from year to year, and even then, the IEP documents, with the exception of the meeting notes, were not translated to her word for word. And Mother had no one in the home who could translate these documents for her.

44. While the letter of the law concerning provision of the IEP to a parent in his/her primary language requires an affirmative request to be made, this still does not answer questions concerning whether she could actually provide "informed consent" to the IEP. In regards to the October 13, 2014 IEP, when Mother returned the IEP to the school writing on it in Spanish that she did not understand it and needed it to be explained, that certainly should have compelled Oakland to consider whether she needed it translated, and at the very least, ask her if that was what she meant. Instead, she was simply confronted by the case manager when she went to pick up Student at school, and asked what she meant, in circumstances that were hardly conducive to a lengthy conversation.

45. Because Oakland did not translate the IEP's of October 3, 2012, October 2, 2013, and October 13, 2014, and the 2012 assessments, Mother was significantly impeded from meaningfully participating in the IEP development process. Further, her ability to give informed consent to the IEP's of October 2, 2013, and October 13, 2014, was compromised. This procedural violation thus denied Student a FAPE from October 2, 2013, to the end of the 2014-2015 school year.

FAILURE TO PROVIDE STUDENT A FAPE FROM NOVEMBER 21, 2012, TO NOVEMBER 20, 2014

46. In his complaint Student claims that he was denied a FAPE because

Oakland failed to provide him with goals, placement, and the related services of occupational therapy, speech and language therapy, and counseling, that met his unique needs, and would provide him with educational benefit from November 21, 2012, to November 20, 2014. In his closing argument he makes the following assertions in support of this claim: that Oakland never conducted an occupational therapy assessment and did not provide him with occupational therapy; that Oakland did not create IEP's that would address his needs as a child with autism, and auditory processing problems; that Student was not provided with resource specialist services for a portion of the 2013-2014 and 2014-2015 school years; and that Student's resource teacher and speech and language therapist never spoke to his general education teachers about what they could do to help him in their classes. District argues that Student was not denied a FAPE because the IEP's at issue provided him with a program and services that met his unique needs.

Goals

47. An IEP must contain annual goals that are measurable, meet the student's unique needs, and allow him to make progress in the general education curriculum. (Ed. Code § 56345, subd. (a)(2)(A).) Goals may also meet other educational needs of the student. (Ed. Code § 56345, subd. (a)(2)(B).)

Analysis

48. Student presented no evidence that he disputed the written expression goals in each of the three IEP's at issue. And the evidence showed that he made significant progress each year in meeting them, although he did not completely meet them. However, Student's repeated failure to meet his social skills goals and expressive language goal establish that the goals were not meeting his unique needs. Goals in these areas were necessary because meeting them would allow Student to participate

fully in the general education curriculum. Because the speech and language goals did not meet Student's unique needs, he was denied a FAPE in the area of speech and language.

49. During the time period at issue, Student was placed in general education classes with accommodations and modifications. He also received pullout resource services. During the hearing Student did not present any evidence that these classes were inappropriate for him, or that he could not access the curriculum in these classes. Rather, all of his academic teachers for the 2013-2014 and 2014-2015 school years credibly testified that he could. Relatively poor grades (C's) in Ms. Ghabra's classes of English and world history were due to him not turning in homework, and were not due to an inability to access the general education curriculum.

50. As established above, Student met his burden of proof that Oakland should have conducted an occupational therapy assessment during the time period at issue. However, Student failed to meet his burden of proof that he actually needed occupational therapy. Ms. Chatton indicated in her report that he required an occupational therapy assessment to address possible fine motor deficits that affected his handwriting. Ms. Magdalena suggested in her report that an occupational therapist "follow up" with Student to address the same issue. However, at the IEP team meeting on October 3, 2012, she now suggested that he needed an occupational therapy screening to address "sensory issues." Because no occupational therapy assessment was ever done, there was no evidence presented as to what type of occupational therapy he required, and no evidence of the frequency, and duration of occupational therapy necessary to provide him with a FAPE in this regard. Accordingly, Student failed to meet his burden of proof that he was denied a FAPE because he was not provided with occupational therapy during the time period at issue.

51. Student did establish that he was denied a FAPE in the area of speech and

language. He failed to make progress on goals in the areas of social skills and expressive language following the IEP team meeting of October 2, 2013. There was no evidence as to why this happened. There was no evidence that he did not receive the speech and language services called for in his IEP's. However, the speech and language services were not effective. Therefore, Student met his burden of proof that he was denied a FAPE in the area of speech and language.

52. Although Student claims that IEP's were not developed to meet his needs as a child with autism, that was not the case. It was established that he failed to meet social skills goals that were part of his IEP's, but since social pragmatics is an area of need for children with autism, they were not, on their face, inappropriate. Student failed to provide evidence of any other goals, services, or placements that were necessary to address his needs because he is on the autism spectrum. Accordingly, he failed to meet his burden of proof to establish that the IEP's in effect during the time period at issue denied him a FAPE because they did not address his autism.

53. Finally, Student did not present evidence that established a need for counseling and thus failed to meet his burden of proof in this regard. The issues raised in Student's closing argument were not in his complaint, and therefore will not be decided.

REMEDIES

1. Student proposed remedies in his closing brief, and his prehearing conference statement. In his closing brief Student asks that Oakland fund independent assessments in the areas of applied behavioral analysis, neuropsychology, speech and language, autism, occupational therapy, auditory processing, and a "Multidisciplinary Assessment." Student also requests self-help skills training, a summer social skills program, any and all services recommended by the independent assessors, 300 hours of bilingual tutoring by S.T.A.R. Academy, and a "point person" with whom Mother can

communicate to ensure Student receives all services to which he is entitled. (Student suggested Ms. Baskind.) In addition, Student is asking for all IEP's to be translated into Spanish, extended school year services, a new laptop that Student can use for augmentative communication, round trip transportation for all services ordered to be provided by an aide, and any other relief deemed appropriate.

2. In his prehearing conference statement, Student also asked that Oakland pay for the independent assessors to attend the IEP team meeting to discuss their assessments, one-to-one nonpublic agency services be provided to Student for educational therapy and occupational therapy, as well as school based counseling. Additionally, Student asked for one-to-one pullout resource services for at least 33 percent of the school day, and one-to-one pullout instruction in reading, writing, and language skills, with an emphasis on visual presentation.

3. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

4. The IDEA does not require compensatory education services to be awarded directly to a student, so staff training is also an appropriate remedy. (*Park v. Anaheim*

Union High School Dist., *supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid; Student v. Reed Union School District,* (Cal. SEA 2008) 52 IDELR 240 [109 LRP 22923 [requiring training on predetermination and parental participation in IEP's]; *Student v. San Diego Unified Sch. Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring training regarding pupil's medical condition and unique needs].)

5. As discussed above, the evidence established that Student requires an occupational therapy assessment with a focus on handwriting (due to his slow handwriting), and self-help skills (due to his inability to tie his shoes and difficulties in bathing and dressing). The evidence also established that halfway through the 2013-2014 school year Student's speech and language therapist should have known that Student was not making progress on the social skills goals, and should have asked that he be reassessed to determine why. Therefore, Student is entitled to an independent occupational therapy assessment with an emphasis on determining appropriate instruction/therapy for the development of self-help skills and fine motor skills including handwriting. He is also entitled to an independent speech and language evaluation with an emphasis on determining appropriate social skills instruction.

6. The evidence established that Student also needs to have a psychoeducational assessment to determine if he has social emotional deficits other than autism, and if he has a specific learning disability, since Oakland failed to conduct necessary assessment in the areas of social emotional deficits, and sensory-motor processing.

7. Student is entitled to independent assessments because this Decision is being issued eight days before the end of the 2014-2015 school year, and prompt assessment is needed since this matter has been in litigation since November 2014. Parents shall choose the assessors, but they must meet Oakland's requirements for independent assessors. Oakland shall fund these assessments, including the attendance of the assessors at the IEP team meeting following the assessments, and shall provide Student with transportation to and from the assessments.

8. Student was denied FAPE from February 1, 2014, to November 20, 2014, because his speech and language goals were not appropriate. This was demonstrated by his failure to make any meaningful progress in meeting goals after June 15, 2013. However, Student did not present any evidence as to the type, duration and frequency of compensatory speech and language services that he needs. Accordingly compensatory education in this area will not be ordered.

9. The evidence established that Mother was denied meaningful participation in the IEP process because she was not provided with translated copies of assessments and IEP's. Therefore, Oakland shall translate into Spanish the following documents and provide the translated copies to Parents: Oakland's 2012 assessments; all documents from IEP team meetings to date, including the IEP from October 3, 2012. These shall be provided to Parents within 30 days of this order. Oakland shall also translate the independent assessments discussed above, and provide them to Parents five business days before the IEP team meeting that is convened to discuss them. Further, any Oakland triennial assessments prepared for Student's IEP team meeting which is due in October 2015, and the IEP from that meeting shall also be translated. Parents shall be provided with the translated assessments five business days prior to the IEP team meetings.

10. The evidence established that it would be helpful for Parents to have a

knowledgeable special education professional to communicate with. Oakland shall designate a Spanish-speaking special education professional as a contact for Parents.

11. The evidence established that the special education staff at East Oakland and Alliance apparently did not know the requirements for having a general education teacher in attendance at an IEP team meeting, and the requirements that must be met for a parent to waive that attendance. Therefore, Oakland shall provide two hours of training to the special education staff who participated at the IEP team meetings in October 2013, and October 2014, if they are still employed by Oakland, as well as the current special education staff at East Oakland and Alliance for this school year (2014-2015) and the next. The training shall focus on the requirements for including general educational teachers on IEP teams, and strategies for encouraging meaningful parent participation, with an emphasis on parents who do not speak English and require interpreters. The training shall be provided by persons who are not Oakland employees. All of Student's other requests for relief are denied.

ORDER

1. Within 30 days of this Order, Oakland shall contact Parents to determine who shall be the independent speech and language, occupational therapy, and psychoeducational assessors, and arrange for funding and transportation for those assessments. The independent assessors shall meet Oakland standards, and shall be located in the Bay Area, which includes the following counties: Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara. The speech and language assessment shall include recommendations for appropriate social skills instruction for Student. The occupational therapy assessment shall include recommendations for appropriate instruction/therapy for the development of self-help skills and fine motor skills including handwriting, if the report determines that Student needs occupational therapy to benefit from special education. The psychoeducational assessment shall focus on

whether Student meets the criteria for a specific learning disability. Oakland shall have the assessment reports translated and the translated assessments shall be provided to Parents no less than five days before the IEP team meeting is convened to review the assessments. Oakland shall fund the IEP team meeting attendance of the assessors. Unless otherwise agreed by the parties, the IEP team meeting shall be convened no later than 10 days after the independent assessment reports are completed.

2. Within 30 days of this Order, Oakland shall provide Parents Spanish translations of the 2012 Oakland assessments and all of the IEP's beginning with the October 3, 2012 IEP, and ending with the most current IEP.

3. After Oakland has conducted the triennial assessments for the October 2015 triennial IEP team meeting, Oakland shall have those assessments translated into Spanish, and Parents shall be provided with those translated documents no less than five business days prior to the IEP team meeting.

4. Within 15 days of this Order, Oakland shall provide Parents with the name of a special education professional who is fluent in Spanish, who shall be designated as the person Parents may contact if they have questions concerning Student's IEP and program.

5. Oakland shall provide two hours of training to the special education staff who participated at the IEP team meetings in October 2013, and October 2014, if they are still employed by Oakland, as well as the current special education staff at East Oakland and Alliance for this school year and next. The training shall focus on the requirements for including general educational teachers on IEP teams, and strategies for encouraging meaningful parent participation, with an emphasis on parents who do not speak English and require interpreters. The training shall be provided by persons who are not Oakland employees. The training shall be provided by persons who are not Oakland employees, and must be completed no later than February 1, 2016.

6. All of Student's other requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on Issues 1(b), 1(d), 1(f), 1(g), 2(b),and 2(c). He partially prevailed on Issue 3. District prevailed on issues 1(a), 1(c), 1(e), and 2(a). District partially prevailed on Issue 3.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: June 2, 2015

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings