BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015120472
MANTECA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016030014

DECISION

Student filed a request for due process hearing with the Office of Administrative Hearings on December 10, 2015, naming the Manteca Unified School District. Student's case was continued on January 13, 2016. Manteca filed a request for due process hearing on February 29, 2016, naming Student. OAH consolidated the matters on March 4, 2016, and designated Student's case as primary for the purpose of the timeline of decision.

Administrative Law Judge Charles Marson heard these matters in Manteca, California, on March 15, 16, 17, 21, and 22, 2016.

Dr. Robert Closson, advocate, represented Parents, who were present throughout

the hearing. Student was not present.

Aimee M. Perry, Attorney at Law, represented Manteca and was assisted on the first day of hearing by Summer D. Dalessandro, Attorney at Law. Roger Goatcher, Manteca's Senior Director of Student Services, was present for most of the hearing on behalf of Manteca. Susan Turner, Manteca's Director of Special Education, was present throughout the hearing on behalf of Manteca.

On March 22, 2016, the matter was continued to April 22, 2016, for the filing of written closing arguments. The parties filed closing arguments on that day, the record was closed, and the matter was submitted for decision.

ISSUES[1]

STUDENT'S ISSUES:

1. From December 10, 2013, to the date of hearing, did Manteca commit the following procedural violations, which resulted in the denial of a free appropriate public education to Student by denying Parents meaningful participation in the individualized education program development process or causing a deprivation of educational benefit:

   a) failing to assess Student during the 2014-2015 school year in all areas of suspected disability, specifically, behavior and dyslexia;

   b) failing to provide prior written notice regarding Manteca's decision not to assess Student for dyslexia;

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

c) failing to assess Student using proper and appropriate tests, assessments, and evaluations given Student's identified race;

d) significantly impeding Parents' meaningful participation in the development of Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 individualized education programs by refusing to provide Parents accurate and pertinent information needed to make decisions, thereby depriving Parent of the ability and right to give informed consent;

e) predetermining Manteca's offers in Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's;

f) predetermining not to offer Student services for the 2014 and 2015 extended school years;

g) failing to identify Student's present levels of performance in Student's March 19, 2014, May 16, 2014, and November 20, 2015 IEP's;

h) failing to develop appropriate goals and objectives in Student's May 16, 2014, and March 16, 2015 IEP's;

i) failing to develop goals and objectives in each area of unique need in Student's May 16, 2014, and March 16, 2015 IEP's;

j) altering Student's assessments and records to hide the fact that Student was not making the educational progress reported in Student's IEP's and educational records;

k) refusing to discuss and disclose what scientifically based methods of instruction would be used in Student's May 16, 2014, and March 16, 2015 IEP's;

l) failing to provide prior written notice regarding Manteca's refusal to state in Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's what scientifically based, peer-reviewed, research-based behavior

intervention program and methodology Manteca would use;

m) failing to provide progress monitoring of Student's May 16, 2014 and March 16, 2015 IEP's appropriate to meet Student's unique needs;

n) failing to have an assistive technology team member present at the May 16, 2014 and March 16, 2015 IEP team meetings;

o) failing to discuss during the March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP team meetings the continuum of placement options;

p) failing to identify in Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's how Manteca would meet Student's needs that result from his disabilities to enable him to be involved in and progress in the general curriculum;

q) failing to identify in Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's the extent to which Student would not participate with nondisabled students in regular education classes or extra-curricular and other non-academic activities;

r) failing to state in Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's why Student could not be tested by regular state standards or why alternative assessment for state testing was appropriate;

s) failing to state in Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's how the major components of each IEP related to each other;

t) failing to show how Student's March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's had a direct relationship between the present levels of performance identified in each IEP and the specific educational

services and supports that would be provided to Student under each IEP, respectively; and

u) failing at the November 20, 2015 IEP team meeting to respond to a written notice from Parents requesting that Student be mainstreamed, that his last signed IEP be fully implemented, and that he be fully and completely tested for all suspected disabilities?

2. From December 13, 2013, to the date of hearing, did Manteca substantively deny Student a FAPE by:

a) failing to offer Student an appropriate placement in the least restrictive environment in the March 19, 2014, May 16, 2014, March 16, 2015, and November 20, 2015 IEP's;

b) failing to offer Student appropriate accommodations, modifications, supports, and supplementary aids, including assistive technology, in the May 16, 2014 and March 16, 2015 IEP's; and

c) making inadequate offers such that Student experienced regression during the 2014-2015 school year?

3. Did Manteca deny Student a FAPE by failing to timely implement Student's March 19, 2014 and March 16, 2015 IEP's?

MANTECA'S ISSUE:

May Manteca assess Student pursuant to the assessment plans dated November 20, 2015, and February 5, 2016, without Parents' consent?

SUMMARY OF DECISION

This Decision rejects Parents' principal argument that, since the beginning of Student's fourth grade year (school year 2014-2015), the law required Student to be placed in regular education classes because they constituted the least restrictive

environment for him. It finds that Student could not have benefited from academic instruction in fourth and fifth grade regular education classes because it would have been beyond his abilities at present; that he could not benefit socially from full-time exposure to regular education peers; and that his frequent behavioral outbursts would have seriously disrupted regular education classes.

The Decision also finds that Manteca administered to Student two assessment measures that should not have been used for an African-American student. This error was due to a combination of inconsistent racial identification of Student by Parents, and Manteca's failure to make a permanent record of new information about Student's race. When Manteca discovered the error, it promptly expunged the results of the impermissible testing. Manteca made no decisions based on the results of those measures, and Student suffered no adverse consequence as a result of their use, so the procedural error did not deny Student a FAPE.

The Decision also finds that Student was denied a FAPE from the beginning of fourth grade to the date of his withdrawal from school because the goals, objectives, and progress reports in his governing IEP were incomplete and inadequate, and made it impossible for Parents and others to determine whether Student was making meaningful progress in his special day class placement. Substantial compensatory education is awarded for this violation, making it unnecessary to decide numerous other issues raised by Student.

The Decision also authorizes Manteca to conduct proposed assessments without parental consent.

FACTUAL FINDINGS

JURISDICTION

1. Student is an 11-year-old boy whose Parents share custody of him equally.

Parent K.[2] lives within the boundaries of Manteca, and Parent J. lives in Stockton. Student is eligible for, and has been receiving, special education and related services in the category of other health impaired, and has been diagnosed as having attention deficit hyperactivity disorder, combined type, with a pronounced element of impulsivity. His primary challenges are controlling his behavior and paying attention in school.

2. Student is a fifth-grader in a special day class for the mildly-to-moderately impaired in Manteca's Mossdale Elementary School, under the terms of an IEP agreed upon in May 2014. The parties realize that Student's fifth grade experience has been unsuccessful, but have been unable to agree on changes to Student's IEP, or on assessments Manteca proposes to conduct. Parents have withdrawn Student from school pending resolution of this dispute.

STUDENT'S NEEDS

3. Student was exposed to methamphetamine and marijuana in utero, and tested positive for those substances at birth. He was taken directly from the hospital into foster care, and adopted by Parents when he was three months old. He has average cognitive ability, but has always displayed extremely high levels of energy and physical activity, as well as anger, temper tantrums, aggression toward others, an inability to calm down after stimulation, a short attention span and a lack of self-control. He has particular difficulty with reading; he has never advanced beyond reading first or second grade materials. He also has difficulty with writing and math.

LEAST RESTRICTIVE ENVIRONMENT AND THE CONTINUUM OF OPTIONS

4. Student was placed in regular education for second and third grade, but in

[2] Parents are designated Parent K. and Parent J. here when referred to separately.

a special day class for fourth and fifth grade. Parents' principal contention is that Student should never have been placed in a special day class, and that he should have remained in regular education throughout the time addressed here. However, the evidence showed that Student could not benefit academically or socially from regular education, and that he continually disrupted his classes and interfered with the education of his classmates. It also showed that Student may not have benefited substantially from placement in a mild-to-moderate special day class, and may need an even more structured and supportive environment than that.

Student's Experience in Third Grade (School Year 2013-2014)

5. By the fall of Student's third grade year, it had become clear to Manteca's IEP team members that Student was failing to learn in regular education, even with an aide and resource support. At an IEP team meeting on November 20, 2013, shortly before the statute of limitations period in this matter,[3] Manteca proposed to transfer Student to a special day class with increased academic and behavioral support.

6. Manteca's summary of Student's present levels of performance in the November 2013 IEP document persuasively showed that Student was failing academically in third grade. Most of the time Student did not pay attention in class; he could not stay on task and required redirection "continuously." Several measures of his reading ability showed that he was still performing at or below the first grade level. On

[3] Student's case was filed on December 10, 2015. The two-year statute of limitations bars any relief for Manteca's conduct before December 10, 2013. However, Student's history in Manteca's school before that time shows what Manteca knew about him when it made disputed educational programming decisions during the limitations period, starting in December 2013.

some measures he was merely "delayed," but on others he could not answer questions at all. He could read only 8 words a minute; the average third grader could read 79. With sight words, he performed like a beginning first grader. In reading comprehension he was functioning at the level of a student in the seventh month of kindergarten; the IEP recommended daily oral practice with first grade material. The document flatly stated that "[Student] cannot read" and "shuts down when asked to do reading tasks."

7. By November 2013, Student's performance in writing and math were not significantly better. His writing was at the level of the seventh month of kindergarten. In math problems he was a year behind; in math fluency he was at the first grade fourth month level; and in quantitative concepts he was at the level of the seventh month of kindergarten.

8. The notes of the November 2013 IEP team meeting contain this comment: "If [Student] continues in a general education classroom, the academic gap will continue to increase." This proved true: Student received the lowest possible grades for his third grade year in everything except art and PE. For each of the three trimesters addressed in Student's report card, a box is checked by the phrase: "The student is not making satisfactory progress toward promotional standards."

9. By November 2013, Student's behavior was equally troubling. He was frequently disrespectful and rude to adults and other children. He routinely made inappropriate noises throughout class time to seek attention from teachers and other students, and displayed frustration because third grade work was too hard for him. He frequently argued with teachers or talked back to them when instructed to do something. In class he chewed on crayons, threw pencils, and ate things off the floor. He had poor relations with his peers. He spit at people and threw rocks on the playground. Marisa Hernandez, Student's one-to-one aide throughout third grade, often removed him from class and took him on walks to calm him down. She characterized his behavior

in class as "very disruptive." Student was suspended once in August for disruption and defiance; again in November for striking his aide; and for a third time in January for hitting and marking a window with a rock, and calling a teacher a "stupid bitch."

10. The meeting notes of the November 2013 IEP team meeting commented: "[Student] needs to be in a special day class . . . .It is affecting his relationship with his peers, and his self-esteem . . .'' The November 2013 IEP offered to move Student to a mild-to-moderate special day class with one-to-one support. But Parents opposed his removal from general education, so he remained there for the rest of his third grade year. At IEP team meetings on December 18, 2013, and March 19, 2014, Manteca team members renewed their efforts to persuade Parents to allow Student's transfer to a special day class, and were successful with Parent J., but not with Parent K. The IEP was therefore not approved, and Student remained in regular education.

11. At an annual IEP team meeting on May 16, 2014, both Parents were persuaded to agree to placing Student in a special day class for fourth grade, and the May 16, 2014 IEP accomplished that. No options other than regular education and a special day class were discussed at any of the meetings in spring 2014. The May 16, 2014 IEP is the last one on which the parties have agreed.

Student's Experience in Fourth Grade (SCHOOL YEAR 2014-2015)

12. In the first several weeks of fourth grade in his new placement, Student was able to moderate his behavior somewhat and to pay attention to some instruction. Both his special day class teacher, Jeff White, and William Riddick, Mr. White's paraprofessional assistant, were experienced and highly regarded. However, in early October, Mr. White announced that he was leaving immediately for another job, and after a series of substitutes, Manteca hired Richard Johnson to take over the classroom. Mr. Johnson was a properly licensed intern without previous teaching experience.

13. Mr. Johnson used a first to second grade curriculum to teach Student

language arts, and a second grade math curriculum. He found Student "able to write," at first without structure but later able to write two paragraphs if the subject interested him. He was, in general, functioning at a first or second grade level in reading and writing.

14. Mr. Johnson testified that in fourth grade he saw a slow overall progression in Student's reading, writing, and math. He started out reading a third grade passage at 20 words per minute with 50 percent accuracy; more than a year later he was reading 40 words per minute on a second grade passage with 80 percent accuracy. In math he advanced from first or second grade level to third grade.

15. Toward the end of Student's fourth grade year, his triennial review was held, and triennial assessments conducted. The documents from that review are frequently inconsistent with Mr. Johnson's view that Student was making academic progress. By May 2015, Student could read a first grade reading passage at 93 words in 3 minutes (or 31 words per minute), and made 16 errors.[4] His basic reading skills and his written expression were described as being in the "borderline to deficit range." His reading comprehension was "in the deficit range."

16. According to Student's triennial academic assessment, his math reasoning was "in the deficit range." He could do only "basic addition, subtraction, and multiplication." Parent K., who is a general education high school teacher, has some familiarity with educational math. She testified that by the end of fourth grade, Student's math was worse than it was in second grade.

17. Student's IEP's contained a behavior plan, and Mr. Johnson testified that the plan was mostly successful in fourth grade. The evidence did show that at the

[4] The assessor noted that Student's scores might not reflect his academic ability due to lack of effort.

beginning of fourth grade, Student's behavior had improved. However, as the fall progressed, Student began to lapse into patterns of behavior that were familiar from third grade. By some measures his behavior became worse; he was suspended three times in third grade and six times in fourth grade. In third grade his need for a behavior plan was rated by the IEP team as "moderate"; in fourth grade it was rated both "moderate" and "serious."

18. Some documents from the triennial review also contradict Mr. Johnson's testimony that Student's behavior plan was working well. It reports that Student made rude comments to adults and peers, often calling people "stupid, idiots or dorks." His general response to corrective feedback was defiance and anger. He also would mistakenly perceive the behavior of other students as teasing him, and react "in a very angry manner by shouting or threats of violence." Manteca staff reported that Student "does not seem to form attachments with other students."

19. In Student's fourth grade year (school year 2014-2015), he was mainstreamed in regular education social studies class for one period a day. His teacher there, Joseph Hadley, testified that Student was generally well mannered; he was accompanied by his one-to-one aide, who would deal with behavioral issues. But there was a lot of fourth grade level reading, which Student could not do. Instead he spent his time "doing things like maps, graphs, and drawings." He did not participate in the activities of the class.

MS. TIENKEN'S ASSESSMENT AND THE TRIENNIAL REVIEW

20. Darei Tienken, one of Manteca's school psychologists, conducted a psychoeducational assessment of Student in May 2015 for his triennial review. Ms. Tienken has an extensive background in assessing students who are disabled.[5] During

[5] Ms. Tienken has a bachelor's degree in human development and a master's in

Student's fourth grade year, between October 2014 and May 2015, Ms. Tienken had frequently been in Mr. Johnson's class and had informally observed Student there at least once a week. Then, as part of her assessment, Ms. Tienken observed Student in class on three more occasions.

21. On Ms. Tienken's first classroom visit for her triennial assessment, Student did not participate in class discussions. His aide and then the teacher prompted him, but "[n]o work was produced." On another occasion he was working with his aide but was crying, and when prompted to work, crumpled and threw his paper. On the third, he would not participate in the classwork, turned his back on the projector, and hit at a peer and started an argument. She noted that he refuses to write, does not want to read, and is reading "yellow level books which are comparable to first grade material." She reported that "[r]edirection by [Student's] staff and teacher leads to overreaction including throwing chairs. Work is often crumpled up or covered with doodling."

22. Mr. Johnson reported to Ms. Tienken that "[w]hen happy, [Student] licks his hand or picks his nose and wipes them on peers. When agitated, [he] throws his chair and other's desks." He had no relationships with peers.

23. Ms. Tienken administered to Student the Behavior Assessment System for Children – Second Edition, which includes soliciting answers on rating scales from parents and teachers. Mr. Johnson rated Student's condition as much worse than Parent

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social work. She has had significant training in Applied Behavior Analysis and completed the studies required to become a Board Certified Behavior Analyst. She is also a state-licensed educational psychologist. She has previously worked as a school psychologist for the Modesto City Schools, the Oakdale Joint Unified School District, and Calaveras County. She has been a school psychologist since 1999, has written many behavior plans, and has performed more than 2000 assessments of students.

K. did. Mr. Johnson's answers placed Student in the Clinically Significant category in hyperactivity, aggression, conduct problems, depression, atypicality, withdrawal and functional communication.

24. Based on the Behavior Assessment System and other measures, Ms. Tienken concluded that Student met the eligibility criteria for emotionally disturbed. Specifically, he displayed an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal conditions; and a general pervasive mood of unhappiness or depression. Ms. Tienken also concluded that his inappropriate behavior had been occurring for a long period of time (since preschool), to a marked degree, and adversely affected his educational performance.

25. In light of her findings, Ms. Tienken recommended that Student's placement be changed to a "highly structured behaviorally focused emotionally supportive environment provided in a special day class for students with an emotional disturbance." At hearing she testified that Student was not properly placed in the mild-to-moderate SDC; he was not academically producing and not making progress, and his emotional and behavioral needs could not be supported by the mild-to-moderate program. Even a behaviorally trained aide, in her opinion, would not have been enough to allow him to progress in that class. He needed a structured environment that was behaviorally solid, and ongoing emotional support.

26. At the triennial IEP team meeting on May 13, 2015, Ms. Tienken presented her report and conclusions. A consensus developed among the Manteca members of the team that Student should be classified eligible as emotionally disturbed and placed in Manteca's special day class for the emotionally disturbed at New Haven Elementary School. However, Parent K. adamantly opposed both a change of Student's eligibility

and placement with emotionally disturbed students. Acceding to her opposition, Manteca did not offer placement at New Haven; instead it waited to obtain an opinion from Parent J. at a second IEP team meeting later in May 2015, and attempted to arrange a visit by both parents to the proposed New Haven SDC. In the end, Manteca did not make any formal offer as a result of the triennial IEP team meeting, and as a result Student was returned for the fifth grade to Mr. Johnson's mild-to-moderate SDC because the May 2014 IEP remained in effect.

Student's Fifth Grade Experience (School Year 2015-2016)

ESCALATION OF STUDENT'S MISBEHAVIOR

27. During the first few weeks of Student's fifth grade year, Student managed to regulate his conduct somewhat, and enjoyed a brief period in which he stayed primarily in class and made (according to Mr. Johnson and Mr. Riddick) a fair amount of progress on his studies. His behavior was still troublesome; by October 7, 2015, he had been removed from class 16 times.

28. Student did not misbehave significantly in his one mainstream class, but he did not learn there either. Mr. Johnson testified that, in fifth grade, Student has been mainstreamed in regular education for science and social studies, taught by Sherry Cardoza. He spoke with Ms. Cardoza about Student almost daily. She informed him that Student did not do any work in the class but did not typically disrupt. He did such things as put his head on his desk and pretend to be asleep, or refuse to do whatever the class was doing and do whatever he wanted on his tablet instead. He did not make an attempt to participate in the class's studies.

29. Student's completion of class work also declined in fifth grade. Mr. Riddick testified that while Student completed about half his work in fourth grade, he completed only about a quarter of it in fifth grade.

30. In late September and early October, 2015, Student's behavior significantly

worsened. According to Mr. Riddick, he engaged in hitting, spitting, kicking the door, chasing other students for no apparent reason, throwing and breaking things. After lunch he was frequently uncontrollable, jumping around and refusing to line up. On two occasions he was so unruly that Mr. Johnson had to exclude him from the classroom for half an hour, during which Student yelled and beat on the windows and doors of the classroom. He chased one child with a rusty nail, threatened another with a boot, hit and kicked a teacher, threatened to get Mr. Johnson fired, and drew swastikas. In class he was disruptive and destructive, and frequently yelled such things as "Teachers are the devil."

31. The parties had IEP team meetings to discuss these developments but did not arrive on a solution, nor did Manteca propose a change of placement. In November, according to Mr. Johnson, Student simply stopped working on his studies. Mr. Johnson could not give him grades for the second trimester because there were not enough work samples to use for grading. In January 2016, police were called to the campus because of Student's behavior, and shortly after that, Parents withdrew him from school. By then, in fifth grade, he had been suspended five times.

TURNOVER OF AIDES

32. At all times relevant here, Student's IEP's have provided him a one-to-one aide. Parents argue that much of Student's misbehavior in fifth grade is Manteca's fault, because Manteca could not or would not provide him a "dedicated" aide; that is, one who remained with him throughout the fall. Instead, Manteca provided a series of temporary aides who could not control Student, and at times he had no aide at all.

33. Student does not like having an aide. He is frequently rude and hostile to his aide, and occasionally attacks the aide physically. He resists having an aide next to him in class, so Manteca seats his aide a short distance away. Overall, starting in second grade, Student has had 16 aides.

34. Manteca maintains a pool of potential one-to-one aides who qualify by being high school graduates and taking a test provided by the County. The aides have some training, but it is not extensive. They are allowed to reject their assignments. If, after working with a student for a day or two, the aide does not want to continue with that student, the aide may decline the job without penalty and be returned to the pool.

35. For most of fourth grade Student had a single aide, but that aide was reassigned at the beginning of Student's fifth grade year. From the beginning of school in August 2015 until late October, Manteca attempted to assign an aide to Student every school day, but it missed a few days. During this time, several of the aides assigned to Student refused to work with him after a day or two; some left without completing a single day. Much of this turnover was caused by Student himself, who would curse, spit on, attack, or run away from his aide. During this period Student had at least four different aides, and possibly as many as ten.

36. When Student lacked an aide, Mr. Riddick would perform the aide's duties in class, giving Student priority over other students. Outside of class, either Mr. Riddick or Mr. Johnson substituted for Student's assigned aide. Because Mr. Riddick or Mr. Johnson performed the services of Student's aide when he did not have one, there was never any significant time that Student was without the service of an aide.

37. Mr. Johnson testified that he gave each of Student's assigned aides between 15 and 25 minutes of training on dealing with Student. For reasons of confidentiality he did not give the aides copies of Student's IEP or behavior plan, but he orally informed each of them of the basics of those documents, and stressed that the best way to respond to Student's frequent angry outbursts was to take him outside of class for a few minutes until he calmed down.

38. Several of Student's aides testified at hearing. One or two corroborated Mr. Johnson's description of their training, but several others testified they had received

little or no training on how to handle Student. All, however, were informed that they should primarily employ the technique of temporarily removing Student from class when his misbehavior was serious or ongoing.

39. In late October 2015, Joy Saunders was assigned as Student's aide, and was able to remain with him until late January 2016, when Student was removed from school by Parents. Ms. Saunders testified that she got along with Student fairly well, liked him, and was willing to continue as his aide past January. During this period, Student's behavior continued to worsen, despite his relatively good relationship with Ms. Saunders.

40. The evidence did not show any correlation between Student's misbehavior and a high turnover of aides. He did relatively well in September, when the turnover was high. He did worse when Ms. Saunders worked with him for months. Both Mr. Johnson and Susan Sanders, Mossdale's principal, opined at hearing that Student's misbehaviors were not particularly different from one aide to the next. The documentary evidence concerning his behavioral difficulties supports that view.

41. There was no substantial evidence at hearing that a high turnover of aides, or any deficiencies in the aides' training, worsened Student's behavior. The evidence of the frequency and severity of Student's misbehavior lends substantial support to the opinion Ms. Tienken expressed at hearing: even an aide having substantial behavioral training would not be enough to regulate Student's behavior. He needs a small, highly structured and supportive environment. Parents, however, do not contend here that Manteca should have put him in such an environment. They contend instead that he should be in a regular education classroom.

42. Manteca's witnesses shared the view that Student could not be adequately educated in the regular education environment. No independent educator or professional of any sort supported Parents' view that Student could benefit in regular

education. Parent K. was Student's only witness.

43. The evidence summarized above showed persuasively that, by the end of third grade, Student could not benefit from instruction in regular education, made no social progress with peers, and disrupted classes. It also showed that even in a mild-to-moderate special day class, he made little academic progress, made no social progress, and continued to severely misbehave and disrupt others, necessitating his frequent removal from class. The evidence showed that he could not be satisfactorily educated in regular education classes.

GOALS AND PROGRESS REPORTING IN FOURTH AND FIFTH GRADE

44. The parties vigorously dispute whether Student made any progress in Mr. Johnson's SDC. Their disagreements are based in part on shortcomings in Student's goals, objectives and progress reports which prevented adequate measurement of his progress.

Reading Comprehension Goal

45. Student's reading comprehension goal from his May 2014 IEP, to be pursued in his fourth grade year, was incomplete and did not state a coherent goal.[6] It stated: "By 5/2015 when given a selected third grade passage, [Student] will read at a fluency rate of correct words per minute __% accuracy in __ consecutive trials . . ." There were no numbers in the blank spaces, and no blank space or value for the number of correct words per minute.

46. Because Student takes alternate assessments, his goals also contained short-term objectives. The first objective under Student's reading comprehension goal

[6] Student's goals, objectives, and progress reports from the May 2014 IEP are contained in the March 16 and May 13, 2015, IEP documents.

was that by November 2014, "when given a selected third grade passage, [Student] will read a fluency rate of 40 correct words per minute with 60% accuracy" in 2 out of 3 trials. A progress report dated October 10, 2014, stated that this objective was "met as stated."

47. The second objective used the same language as the first, and projected that by March 2015, Student would read at a rate of 60 words per minute with 70% accuracy in 3 out of 4 trials. However, the progress report under this objective left the critical numbers blank: "[Student] is able to read a passage at his instructional level ___ words per minute with ___ accuracy." In addition, Mr. Johnson testified that Student's instructional level in reading is late first grade or early second grade, which is not the instructional level addressed by the goal.

48. The third short-term reading comprehension objective was left blank, so there was no way to tell where Student was expected to be at the end of the year addressed by the goal. There was a third progress report, dated May 13, 2015, which stated that "[w]hen given a first grade passage [Student] is able to read 22 words per minute." No information about accuracy or the number of trials was presented, nor does the report address how well Student can read the third grade material the goal addresses.

Math Reasoning Goal

49. Student's math reasoning goal for fourth grade was also incomplete and incoherent. It stated that by May 2015, "when given __ problems, [Student] will use a variety of methods to explain math reasoning with __% accuracy in __ of __ trials . . ." The blank spaces contained no values.

50. The first short-term objective for the math reasoning goal projected that by November 2014, when given 6 problems, Student "will use methods including words, numbers, symbol, or charts to explain math reasoning with 60% accuracy" in 2 of 3 trials.

The progress report asserted that this objective was "met as stated."

51. The second short-term objective expanded the methods by which Student would explain math reasoning. By March 2015, when given eight problems, Student "will use methods including graphs, tables, diagrams, or models to explain math reasoning with 70% accuracy" in 3 of 4 trials. But the related progress report, dated March 4, 2015, stated only that Student was "able to complete 8 problems as stated in his goal." There was no mention of the various methods he was supposed to learn to explain math reasoning.

52. The third short-term objective was left blank, so there was no way to know what was expected of Student by May 2015. A third progress report stated that "[w]hen given 8 3-digit addition or subtraction problem[] without regrouping [Student] is able to complete those problems with 80% accuracy." However, the goal did not relate to completing addition or subtraction problems; it required Student to "use a variety of methods to explain math reasoning." There was no second or final progress report on Student's ability to use the various methods listed in the first two objectives – symbols, charts, graphs, and the like -- to explain math reasoning.

Behavioral Goal

53. The baseline, or present level of performance, in Student's fourth grade behavioral goal begins with this incomprehensible sentence: "[Student] continues to make inappropriate noises throughout his class time but the frequency and intensity is at 50% accuracy."[7] The rest of the baseline attributes this conduct to an unwillingness to

[7] The first part of this garbled sentence may have been derived from a progress report on Student's third grade behavior goal, which contains this sentence: "[Student] continues to make inappropriate noises through his class time but the frequency and

do school work and attention-seeking, and notes that sometimes rewards help. The goal itself requires Student to "refrain from talking back to his teacher or aide when redirected or given an assignment and accept redirection as a simple consequence and get started quicker and finish assignments in class with 80% accuracy . . ."

54. The first short-term objective for the behavior goal required that by November 2014, Student "will refrain from talking back/arguing with his teachers/aide when redirected or when given an assignment and accept redirection as a simple consequence and get started quicker and finish assignments in class with 60% accuracy . . ." However, the first progress report, dated October 10, 2014, states only that Student "continues to talk back; however, he does take redirection with 60% accuracy as the goal is stated." The goal does not address taking redirection with any degree of accuracy; instead, it requires a specific degree of accuracy in completing assignments in class.

55. The second behavior goal objective was worded like the first, differing only in requiring 70% accuracy in finishing assignments by March 2015. The March 2015 progress report stated that Student continued to talk back, and "will accept redirection with prompting 60 % of the time." The goal did not address the percentage of time Student should accept redirection.

56. The third short-term objective for the behavior goal was left blank, so there is no way to measure what progress on this goal was expected of Student by May 2015 except by reference to the annual goal. But the third progress report was identical to the second, and a comment was added that Student "has difficulty with redirection. He becomes emotional and refuses to complete his work." The degree to which he could get started quicker and do assignments with accuracy was not addressed.

57. A parent or other outside observer, such as a hearing officer or a court,

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intensity has decreased toward the end of the trimester."

could not reasonably determine from these goals, objectives and progress reports how far Student was supposed to have progressed in a year, or how close he came to doing so. The failure of the reading, math, and behavioral goals to serve these purposes contributed substantially to a serious dispute between Manteca and Parents, and between Manteca staff members, over the degree to which Student was making any progress in his placement or in controlling his behavior. Mr. Johnson testified, for example, that Student's behavior plan was working well. His assistant, Mr. Riddick, testified that the plan was not working, so he and Mr. Johnson had begun to modify it informally. Mr. Johnson thought Student's progress in fourth grade had been substantial. Roger Goatcher, Manteca's senior director of student services, testified that Student made progress, but would not go so far as to say it was substantial. School psychologist Tienken testified she did not think Student made any progress at all in fourth grade. Manteca did not specifically defend the details of Student's goals, objectives, and progress reports.

58. Parent K. testified that she thought Student not only made no progress in fourth grade, but that he regressed. She went so far as to assert, in Student's complaint, that Manteca actually altered school records to conceal his lack of progress. This dispute is a primary cause of Parents' removal of Student from school.

PREDETERMINATION OF OFFERS

59. Parents argue generally that Manteca predetermined its offers in the March 19 and May 16, 2014 IEP's. They argue in specific that Manteca predetermined that it would not offer Student placement in the 2014 extended school year.

60. At the March 19, 2014 IEP team meeting, Manteca staff merely repeated the offer it had made at the November 20 and December 18, 2013, IEP team meetings, which was to remove Student from general education and place him in a special day class. The evidence does show that Manteca team members were convinced of the

wisdom of that proposed move. As shown above, they knew that Student was failing in regular education. But the evidence did not show any intention to impose this view on Parent K.; at the March 19, 2014, IEP team meeting, Manteca deferred to Parent K.'s desire to leave Student in general education even though Parent J. favored the move.

61. Only two pages of the May 16, 2014 IEP were introduced in evidence, making it impossible to judge from the document whether any indication of predetermination exists. Again Manteca made the offer to move Student to an SDC, and this time both Parents agreed.

62. In his closing argument, Student claims that proof of predetermination lies in a conspiracy among Manteca staff to cause Student to fail. Parents' "theory of the case" is that Manteca "wanted [Student] to fail, to be expelled, or be transferred out of Mossdale." Student asserts that, pursuant to this conspiracy, Manteca deliberately avoided giving him competent aides, avoided assessing him adequately, and labeled him emotionally disturbed to get him "out of regular education forever." There was no evidence that this conspiracy existed or that any of Manteca's staff had these sinister intentions.

63. Parent K. testified that extended school year was not discussed at either of the meetings in spring 2014, and at the time she did not know what it was. However, the preponderance of evidence showed that it was discussed; it was just not made part of the offer. One of the pages of the May 16, 2014 IEP that was admitted in evidence is a Services page showing that the offer did not include ESY. The other is entitled "IEP Required Elements Checklist," which asks parents to check, or approve the checking of, boxes next to items that were discussed. The box labeled "Determination of extended school year needs" is checked, and the document is signed by both Parents. Since Parent K. is a high school teacher and is familiar with the district's needs for documentation, the fact that she signed this document is a more likely indicator of what

happened than her current memory. Parent J. did not testify.

64. There was no evidence that Student needed extended school year in the summer of 2014. Student may have regressed in fourth or fifth grade, as Parent K. claims, but if he did it was due to problems in his placement much larger than his presence or absence in summer school. There was no evidence that interruption of his educational programming by summer may have cause regression which, when coupled with his limited recoupment capacity, would have rendered it impossible or unlikely that he would attain the level of self-sufficiency and independence that would otherwise be expected in view of his disability.

DISCRIMINATORY TESTING

65. Parents were aware that Student is African-American when they adopted him, but early in his life they frequently told people, including school officials, that he was white. They wanted to be the ones to explain the circumstances of his adoption to him when he was ready, and did not want him to be questioned about it, or hear about it by accident or inaccurately from someone else. Parents were not entirely consistent in this; in March 2011 they described Student as "White / Black" on a school background questionnaire, but in August 2013 registered him as "white," and his IEP's before May 2015 referred to him as white. The parties agree that Student is not obviously African-American in appearance.

66. In an IEP team meeting in September 2012 or September 2013, Parent K. asked Carolyn Herbst, the resource teacher running the meeting, to note on the IEP that Student is African-American. Ms. Herbst wrote "African-American" by hand on the IEP, but when the IEP was placed into the Special Education Information System, the school's database for special education children, the handwritten notation was apparently not recorded.

67. Ms. Tienken established that, as she began her triennial psychoeducational

assessment, she obtained materials about Student from the Special Education Information System. Based on those materials, she believed that Student was white. Parent K. agrees that Ms. Tienken believed Student was white when she first conducted her May 2015 assessment.

68. As part of her assessment, Ms. Tienken administered to Student an extensive battery of tests that included the Wechsler Intelligence Scale for Children – Fourth Edition and the Naglieri Nonverbal Ability Test. Under governing law, these measures were probably not appropriate for administration to African-American students for special education purposes.[8]

69. Shortly before the May 13, 2015 triennial IEP team meeting, Ms. Tienken gave Parent K. a draft of her psychoeducational assessment, including the results of the Wechsler and Naglieri assessments. Parent K. had many objections to Ms. Tienken's draft report, and went to school to discuss them with her. She informed Ms. Tienken that Student is African-American. Ms. Tienken then redacted from her final report all mention of the Wechsler and Naglieri measures and results, except to note that the assessments were administered. On May 27, 2015, Parent K. altered Student's registration form to indicate that Student is African-American.

70. There was no evidence that Student's scores on the Wechsler and Naglieri measures were used in any decision-making by Manteca, or that the administration of those measures had any particular negative effect on Student. Nor was there any evidence that Manteca failed to administer any assessments more appropriate for an

[8] Student did not introduce any evidence showing that these measures were within the category of tests forbidden by *Larry P. v. Riles* (*I*) (9th Cir. 1974) 502 F.2d 963, and related decisions (see Conclusion of Law No. 34), but Manteca apparently concedes that they were.

African-American student.

DISTRICT ISSUE: MANTECA'S RIGHT TO ASSESS

71. On November 20, 2015, Manteca gave Parents an assessment plan that would have authorized assessments by Manteca of Student's "social/emotional/behavioral status" and his health. At an IEP team meeting on January 29, 2016, further assessments were discussed, and Manteca offered a functional behavior assessment, an educationally related mental health services assessment, and an academic assessment. This offer was memorialized in an assessment plan dated February 5, 2016, which included the assessments previously offered. Manteca's pending assessment plan of February 5, 2016, proposes assessments in the areas of academic and pre-academic achievement, social/emotional/behavior status, health, and educationally related mental health. By the time of hearing, Parents had not agreed to the February 5, 2016 assessment plan, which was sent to them on February 9, 2016.

72. In May 2015, as part of his triennial review, Student was tested for academic achievement, but he was resistant and did not fully participate. The examiner noted that his effort was poor, and as a result the information obtained was not entirely reliable. Another test of his academic skills may be more productive, and the parties agree he should have one.

73. The parties agree that Student's behavior worsened in his fifth grade year, but they dispute the causes of that development, and on this record the causes are not clear. The parties agree that Student's behavior requires assessment. Parent K. testified that Student needs to be tested in the area of behavior, and Student's closing argument states: "[Parents] want to see [Student] tested and assessed for all suspected disabilities."

74. Parents insist, however that all testing be done by outsiders for two reasons. First, Parents do not trust Manteca assessors because of the perceived

conspiracy against Student mentioned above. Second, Student states in his closing argument: "[B]ecause of illegal testing, the improper test instruments [C-TOPP], because of their sloppy work and untrustworthy work product, the District has lost their privilege and right to test or educate [Student]."[9] This argument is overwrought. Some testing of Student was unlawful, but as shown above, that failing was inadvertent and promptly corrected. There was no evidence that the C-TOPP-2 was an improper instrument to administer. Student does not identify the "sloppy work and untrustworthy work product" he condemns. There was no evidence that Manteca assessors cannot adequately conduct the assessments Manteca proposes.

CONCLUSIONS OF LAW

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA[10]

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 et seq. (2006);[11] Ed. Code, § 56000 et seq.; Cal.

[9] In November 2013, Manteca administered to Student the Comprehensive Test of Phonological Processing – 2d edition, in order to determine whether he had a specific learning disorder, including dyslexia. Student contends that measure was inadequate to test for dyslexia; Manteca contends it was adequate for that purpose. That dispute not decided here because it pertains only to the 2014-2015 school year. (See Conclusion of Law No. 45.)

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

[11] All subsequent references to the Code of Federal Regulations are to the 2006

Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for 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).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "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 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 specifies 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 Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court

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version.

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 Sch. Dist.* (9th Cir. 2010) 592 F.3d 938, 950-951.)

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.) 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].) By this standard, Student, as the filing party, had the burden of proof on all issues in his case, while Manteca had the burden of proof on the only issue in its case.[12]

[12] Student's claim that Manteca bears the burden to show that Student's placement is in the least restrictive environment is based upon *Board of Educ., Sacramento City Unified School Dist.* (E.D.Cal. 1992) 786 F.Supp. 874, 882, affd. (9th Cir. 1994) 14 F.3d 1398, a decision that long preceded *Schaffer v. Weast, supra,* and on that

5. A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

ISSUE 1.D: REFUSING TO PROVIDE PARENTS ACCURATE AND PERTINENT INFORMATION NEEDED TO MAKE DECISIONS;

ISSUE 1.G: FAILING TO IDENTIFY STUDENT'S PRESENT LEVELS OF PERFORMANCE;

ISSUE 1.H: FAILING TO DEVELOP APPROPRIATE GOALS AND OBJECTIVES IN STUDENT'S MAY 16, 2014, IEP;

ISSUE 1.M: FAILING TO PROVIDE ADEQUATE PROGRESS MONITORING OF STUDENT'S IEP'S.

6. An annual IEP must contain a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).) The present levels of performance create baselines for designing educational programming and measuring a student's future progress toward annual goals.

7. An annual IEP must also contain a statement of measurable annual goals

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point is no longer the law. (See, e.g., *Yates v. Washoe County Sch. Dist.* (D. Nev., Aug. 28, 2008, No. 03:07-CV-00200-LRH-RJJ) 2008 WL 4106816, pp. 3, 6 [nonpub. opn.].)

designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg. 12,406, 12,471 (1999 regulations).)

8. For a student taking alternative assessments aligned to alternative achievement standards (like Student), the goals must be broken down into short-term objectives. (20 USC § 1414 (d)(1)(A)(i)(I)(cc).) Short-term objectives are measurable, intermediate steps between the present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals. (U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg. 12,406, 12,471 (1999 regulations).)

9. In addition, the IEP must include a description of the manner in which the progress of the pupil toward meeting the annual goals described in paragraph (2) will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd. (a)(3).)

10. A special education student's goals, and the related objectives and progress reports, are among the most important parts of his IEP. An examination of an IEP's goals is central to determining whether a student has received a FAPE. In *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, the court stated: "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit."

(See also *County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1462 ["To measure whether a child benefits from the current educational services she receives, the IEP team determines whether there is progress toward the central goals and objectives of the IEP."].)

11. The United States Department of Education has also explained the importance of adequate goals and objectives: "Measurable annual goals, including benchmarks or short-term objectives, are critical to the strategic planning process used to develop and implement the IEP for each child with a disability" because the goals "enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs." (Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 Fed. Reg. 12,406, 12,471 (March 12, 1999)(Comments to 1999 Regulations).)

12. The evidence showed that Student was denied a FAPE during his fourth grade year and until his removal from school in January 2016 because the most important goals in his governing IEP (from May 2014) did not comply with the standards above. They were not measurable because the numerical values in two of them (reading comprehension and math reasoning) were left entirely blank. Nor was the behavioral goal measurable, as it began with a present level of performance making an incomprehensible statement from which no measurement could proceed: "[Student] continues to make inappropriate noises throughout his class time but the frequency and intensity is at 50% accuracy."

13. Sometimes an inadequate goal can be rescued by reference to the specific short-term objectives implementing it. (See, e.g., *R.B. v. New York City Dept. of Educ.* (S.D.N.Y. 2014) 15 F.Supp.3d 421, 433-434.) For the reading and mathematics goals, that is not the case here. A reader could not infer the numerical values that belonged in the

blanks of the reading comprehension and math reasoning goals from their third short-term objectives (which would have coincided with the end of the annual period) because those third short-term objectives were also left blank.

14. The progress reporting for the reading comprehension, math reasoning, and behavior goals was inadequate and insufficiently related to the goals themselves. The second report for the reading comprehension goal had blank numerical values, and the third did not address the actual requirements of the goal. The second and third reports for the math reasoning goal and the behavioral goal addressed different measurements than those set forth in the goals themselves, and did not measure Student's progress on the activities the goals required Student to master.

15. During Student's fourth and fifth grade years, the defects in Student's reading comprehension, math reasoning and behavioral goals and in their related objectives and progress reports impeded his right to a FAPE and deprived him of educational benefits. It gave the IEP team, including Parents, no opportunity to revise his goals in light of his progress because that progress could not be measured. It also significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. The central dispute between the parties has been whether Student belongs in regular education or a special day class of some kind. The defects in the goals, objectives, and progress reporting rendered the IEP team unable to adequately compare his performance in his special day class to his performance in regular education, and unable to adequately determine whether he needed transfer to a special day class for the emotionally disturbed in order to receive a FAPE. The dispute about Student's progress in the fourth and fifth grades – or lack of it – is a major reason why the parties cannot agree on a new IEP and why Parents withdrew him from school. The defects in the goals, objectives and progress reporting for the goals in Student's May 2014 IEP, which remains in effect, denied him of a FAPE in the

fourth and fifth grades.

ISSUE 2.A: DID MANTECA FAIL TO OFFER STUDENT PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT IN THE MARCH 19 AND MAY 16, 2014, AND MARCH 16 AND NOVEMBER 20, 2015 IEP'S?

16. Both federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with nondisabled peers "to the maximum extent appropriate," and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii); Ed. Code, § 56040.1; see *Ms. S. v. Vashon Island Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403.)

17. When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced: (1) the educational benefits of full-time placement in a regular classroom; (2) the non-academic benefits of full-time placement in a regular classroom; (3) the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and (4) the cost of placing the child with a disability full-time in a regular classroom. (*Sacramento City Unified Sch. Dist. v. Rachel H.*, *supra,* 14 F.3d at p. 1404.)[13]

18. The evidence showed that Student would derive little or no educational

[13] Neither party presented any evidence, or makes any argument, relating to the cost of educating student in regular education, so that criterion is not further addressed here.

benefit from full-time placement in regular education. His experience in regular education in third grade, with a full-time aide and a behavior plan, showed that he could not learn there. His reading, when he was willing to read at all, was at kindergarten or first grade level and stayed there. His math was almost as bad. He received the lowest possible grades in all academic subjects, and could not advance satisfactorily toward the next grade. In his one mainstream class in fourth and fifth grade, he was unable to do the work, did not participate in the class, and got no benefit from it.

19. Student claims in his closing argument that Parent K. testified he was almost at grade level in regular education third grade. This misrepresents her testimony, which was that Student was almost at grade level in math in second grade, and that Student's skills in reading and math were essentially flat from third to fifth grade, or declining. The substantial documentary evidence from Student's third grade showed that he was unable to do third grade work. Student also argues that he regressed in fourth and fifth grades in his special day class. If so, that could support an argument that his placement in that particular special day class was inappropriate, but that does not mean he could succeed in full-time regular education.

20. The evidence showed that Student would derive little or no non-academic benefit from full-time placement in regular education. In regular education in third grade, he had poor and hostile relations with his peers. He was completely disengaged from the rest of his class in mainstream classes in fourth and fifth grade. There was no evidence that he made a single friend at school.

21. The evidence showed that the effect of Student's presence on the teacher and other children in a regular education classroom would be substantially disruptive. In his regular education class in third grade, Student frequently shouted inappropriate remarks to seek attention, threw and broke things, and required continuous redirection and considerable extra attention from school staff. His behavior significantly interfered

with his own education and that of the students around him. Every one of Student's IEP's has noted his disruptive effect on other students. Student argues that his acceptable behavior in his one mainstreaming class in fourth grade proves he would not disrupt a general education class, but that was a single period in a day. Student's behavior in his special day class during the rest of those days was disruptive. Student's misbehavior in third grade and in his special day class is a much better predictor of his ability to control his behavior all day in a general education class than is a single period outside his normal class.

22. On balance, consideration of the factors set forth in *Sacramento City Unified Sch. Dist. v. Rachel H.*, *supra,* compels the conclusion that Student could not be satisfactorily educated in a full-time regular education environment. Manteca therefore did not deny him a FAPE by failing to offer placement in that environment.

ISSUE 1.O: FAILING TO DISCUSS THE CONTINUUM OF PLACEMENT OPTIONS DURING THE MARCH 19 AND MAY 16, 2014 IEP TEAM MEETINGS.

23. School districts, as part of a special education local plan area, must have available a continuum of program options to meet an eligible student's needs for special education and related services. (34 C.F.R. § 300.115; Ed. Code, § 56360.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; non-public, non-sectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication, instruction in the home or instructions in hospitals or institutions. (34 C.F.R. § 300.115(b); Ed. Code, § 56361.)

24. The district's obligation is to make available a continuum of options, not to discuss every one of them at every IEP team meeting. (See *A.D. v. New York City Dept. of Educ*. (S.D.N.Y., March 19, 2013, No. 12-CV-2673 (RA)), 2013 WL 1155570, p. 8 [nonpub.

opn.]; *L.S. v. Newark Unified Sch. Dist*. (N.D.Cal., May 22, 2006, No. C 05-03241 JSW) 2006 WL 1390661, pp. 5-6 [nonpub. opn]; *Katherine G. v. Kentfield Sch. Dist.* (N.D.Cal. 2003) 261 F.Supp.2d 1159, 1189-1190.)

25. Student states in his closing argument that "[t]here was no evidence . . . that [Manteca] offered the Parents a continuum of placement options; there was a mountain of evidence to show the Parent had requested LRE in the last 4-IEPs . . ." To the extent that this is meant to argue that Manteca had some obligation to *offer* more than one option on the continuum, it is plainly unsupported by the law, which requires only that the options are available. To the extent it is a variation on Student's argument that he should have been placed in regular education, that contention is addressed above.

26. The evidence showed that the choice between general education and a special day class was thoroughly discussed at the March 19 and May 16, 2014 IEP team meetings, since it was at the heart of the disagreement among Manteca, Parent K. and Parent J. There was no point in discussing other placements (such as home and hospital or residential placements) at those meetings because they were irrelevant to the choices before the IEP team. Manteca did not deny Student a FAPE by failing to discuss or offer the entire continuum of options at these meetings.

ISSUE 1.E: PREDETERMINING MANTECA'S OFFERS IN STUDENT'S MARCH 19 AND MAY 16, 2014, IEP'S.

ISSUE 1.F: PREDETERMINING NOT TO OFFER STUDENT SERVICES FOR THE 2014 EXTENDED SCHOOL YEARS.

ISSUE 2.C: MAKING INADEQUATE OFFERS SUCH THAT STUDENT EXPERIENCED REGRESSION DURING THE 2014-2015 SCHOOL YEAR.

27. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification,

assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

28. "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City Sch. Dist*. (2007) 550 U.S. 516, 524 [167 L.Ed.2d 904]). Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

29. Predetermination of an IEP offer violates the above requirements. It occurs when a school district has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. v. Las Virgenes Unified Sch. Dist*. (I) (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. opn.].) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County Sch. Dist*. (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.) "Participation must be more than mere form; it must be meaningful." (*Deal v. Hamilton County Bd. of Educ*. (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted].)

30. At the March 19, 2014 IEP team meeting, Manteca merely restated the offer it had made in November and December 2013 to move Student to an SDC. The evidence showed that Manteca team members were convinced that move was necessary to provide Student a FAPE, and they had considerable reason to believe that. There was no evidence that they conspired to present a take-it-or-leave-it offer; in fact they deferred to Parent K.'s disagreement, left Student in regular education, and did not seek an order in a due process hearing moving him.

31. There was no evidence of any conspiracy against Student, or that any of

the offers made by Manteca in the relevant time were intended to cause Student's removal from Mossdale or otherwise deprive him of any educational opportunity.

32. The purpose of special education during the extended school year is to prevent serious regression over the summer months. (*Hoeft v. Tucson Unified Sch. Dist*. (9th Cir. 1992) 967 F.2d 1298, 1301; *Letter to Myers* (OSEP 1989)16 IDELR 290.) The mere fact of likely regression is not enough to require an extended school year placement, because all students "may regress to some extent during lengthy breaks from school." (*MM v. School Dist. of Greenville County* (4th Cir 2002) 303 F.3d 523, 538.) In California, eligibility for extended school year requires, among other things, a finding by the IEP team that "interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition." (Cal. Code Regs., tit. 5, § 3043, 1st par.)

33. There was no evidence that Manteca IEP team members arrived at either of the spring 2014 meetings having determined not to offer Student extended school year. There was no evidence that Student met the technical requirements for eligibility for extended school year, such as evidence that interruption of his education, coupled with limited recoupment ability, would render it impossible or unlikely that he would re-attain appropriate levels of self-sufficiency and independence. Parent K.'s perception of Student's regression is related to his overall program, not to the presence or absence of summer school.

ISSUE 1.C: FAILING TO ASSESS STUDENT USING PROPER AND APPROPRIATE TESTS, ASSESSMENTS, AND EVALUATIONS GIVEN STUDENT'S IDENTIFIED RACE.

34. In *Larry P. v. Riles (I)* (9th Cir. 1974) 502 F.2d 963, and *Larry P. v. Riles (II)* (9th Cir. 1984) 793 F.2d 969, the Ninth Circuit Court of Appeals upheld district court

injunctions preventing California schools from using standardized intelligence tests for the purpose of identifying African-American students for special education and services. (See also *Crawford v. Riles* (9th Cir. 1994) 37 F.3d 485, 486.) The IDEA and the Education Code prohibit the use of discriminatory testing and evaluation materials. (20 U.S.C. § 1412(a)(6)(B); Ed. Code, § 56320, subd. (a).)

35. The evidence showed that, in early May 2015, Manteca violated the *Larry P.* rule when Ms. Tienken, believing Student to be white, administered to him the Wechsler Intelligence Scale for Children – Fourth Edition and the Naglieri Nonverbal Ability Test. The violation occurred in part because Parents were inconsistent in describing Student's race to the school, and partly because Ms. Herbst made the notation "African-American" by hand on an IEP document but apparently failed to enter that notation in the digital version of the IEP that others would later obtain from the Special Education Information System.

36. Manteca's use of the two improper assessments, and maintenance of their results in the first two weeks of May 2015, violated the IDEA because the measures were discriminatory. (20 U.S.C. § 1412(a)(6)(B); Ed. Code, § 56320, subd. (a).) However, the procedural violation was inadvertent, as Parent K. agreed. It was promptly corrected by redaction of the results. There was no evidence Student suffered any educational loss as the result of the use of these assessments, no evidence the assessment results were used in making any decisions, and no evidence that use of the assessments interfered with Parents' participatory rights. Manteca's violation of the *Larry P.* rule therefore did not deny Student a FAPE.

DISTRICT'S ISSUE: MAY MANTECA ASSESS STUDENT PURSUANT TO THE ASSESSMENT PLANS DATED NOVEMBER 20, 2015, AND FEBRUARY 5, 2016, WITHOUT PARENTS' CONSENT?

37. Reassessment of a student eligible for special education must be

conducted at least every three years, or more frequently if the local educational agency determines that conditions warrant reassessment, or if a reassessment is requested by the student's teacher or parent. (20 U.S.C. § 1414(a)(2)(A); Ed. Code, § 56381, subds. (a)(1), (2).)

38. A reassessment usually requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain consent, a school district must develop and propose to the parents a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) If the parents do not consent to the plan, the district can conduct the reassessment only by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (34 C.F.R. §§ 300.300(3)(i), 300.300(4)(c)(ii); Ed. Code, §§ 56381, subd. (f)(3); 56501, subd. (a)(3); 56506, subd. (e).) Accordingly, to proceed with a reassessment over a parent's objection, a school district must demonstrate at a due process hearing (1) that the parent has been provided an appropriate written reassessment plan to which the parent has not consented, and (2) that the student's triennial reassessment is due, that conditions warrant reassessment, or that the student's parent or teacher has requested reassessment. (Ed. Code, § 56381, subd. (a).)

39. The required notice of assessment consists of the proposed assessment plan, and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of the student; explain the types of assessments to be conducted; and notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).) The district must give the parent at least 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

40. The evidence showed that Manteca provided Parents an assessment plan

on February 9, 2016, that complied with the above requirements, and accompanied it with a notice of procedural safeguards, and that Parents have had more than 15 days to review, sign, and return it but have not done so.

41. The parties agree, and the evidence showed, that reassessment of Student in the areas of academic and pre-academic achievement, social/emotional/behavior status, health and educationally related mental health, is warranted under the circumstances. Because Student did not cooperate well during his last academic assessment, the parties do not have reliable information about his levels of academic achievement. The causes of the significant worsening of Student's behaviors in his fifth grade year are unknown and are disputed by the parties; further information on his social, emotional and behavioral status will assist them in resolving those disputes and deciding on future programs for Student. Health and educationally related mental health assessments may focus, or even resolve, the parties' dispute over whether Student should be primarily eligible for special education as emotionally disturbed, which is important to his proper educational programming and placement.

42. Parents will not approve the proposed assessments if they are to be conducted by Manteca personnel. However, a parent who wishes that his or her child receive special education services must allow the school district to reassess if conditions warrant it. In *Gregory K. v. Longview Sch. Dist*. (9th Cir. 1987) 811 F.2d 1307, 1315, the court stated that "if the parents want [their child] to receive special education under the Act, they are obliged to permit such testing." (See, e.g., *Patricia P. v. Board of Educ. of Oak Park and River Forest High Sch. Dist. No. 200* (7th Cir. 2000) 203 F.3d 462, 468; see also *Johnson v. Duneland Sch. Corp.* (7th Cir. 1996) 92 F.3d 554, 557-558.) In *Andress v. Cleveland Independent. School Dist*. (5th Cir. 1995) 64 F.3d 176, 179, the court concluded: "[t]here is no exception to the rule that a school district has a right to test a student itself in order to evaluate or reevaluate the student's eligibility under IDEA."

43. As long as the statutory requirements for assessments are satisfied, parents may not put conditions on assessments; "selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities." (*Letter to Anonymous* (OSEP 1993) 20 IDELR 542.) Moreover, the right to assess belongs to the school district; Parents have no right to insist on outside assessors. (See, e.g., *Andress v. Cleveland Independent. School Dist.*, *supra,* 64 F.3d at p. 179.) In *G.J. v. Muscogee County Sch. Dist*. (M.D. Ga. 2010) 704 F.Supp.2d 1299, affd. (11th Cir. 2012) 668 F.3d 1258, for example, parents purported to agree to reassessments, but attempted to require particular assessors to conduct them. The ALJ deemed this a refusal of consent, and the District Court agreed, noting: "With such restrictions, Plaintiffs' purported consent is not consent at all." (*Id.*, 704 F.Supp.2d at p. 1309.) In affirming, the Eleventh Circuit observed that parents' conditions "vitiated any rights the school district had under the IDEA for the reevaluation process . . ." (*Id.*, 668 F.3d at p. 1264.) If Parents disagree with an assessment conducted by a school district, they have the right, under certain circumstances, to obtain an independent educational evaluation at district expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1), (b)(1); Ed. Code, § 56329, subd. (b); Ed. Code, §§ 56329, 56506, subd. (c).)

44. The evidence showed that circumstances warrant reassessment of Student according to the February 5, 2016 assessment plan, and Manteca will be allowed to proceed with those assessments in the absence of parental consent.

ISSUES NOT DECIDED

45. Since this Decision affords relief to Student for the substantive denial of a FAPE from the beginning of his fourth grade year to the time he left school, it is unnecessary to decide a number of issues relating to that time period. Any relief that might be ordered for those violations, if proved, is subsumed in the relief this Decision affords. For that reason, the following issues are not decided here: Issues 1.a, 1.b, 1.e (as

to school years 2014-2015 and 2015-2016) 1.f (as to the 2015 extended school year), 1.h (as to school year 2014-2015), 1.i, 2.b, and 3 (as to the March 16, 2015 IEP).

46. Other issues are not decided here because Student abandoned them in the course of the litigation, either expressly or by failure to argue them in his closing argument.[14] They are issues 1.j, 1.k, 1.l, 1.n, 1.p, 1.q, 1.r, 1.s, 1.t, 1.u, and 3 (as to the March 19, 2014 IEP).

REMEDIES

47. 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 Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft "appropriate relief" for a party. (*Parents of Student W. v. Puyallup Sch. Dist., No. 3, supra,* 31 F.3d at p. 1496.) An award of compensatory education need not provide "day-for-day compensation." (*Id.* at p. 1497.) 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. (*Ibid.*)

48. Student makes several suggestions for relief in his closing argument, but they have no evidentiary support in the record because Student presented no evidence concerning appropriate relief. The ALJ must therefore craft a remedy without the assistance of the prevailing party, because the alternative is to afford no relief at all. The

[14] On the last day of hearing, the ALJ advised Student's advocate that any issues not argued in Student's closing argument would be considered abandoned.

ALJ has therefore reviewed the testimony of the witnesses and the documentary evidence presented at hearing. Applying the equitable principles discussed in Conclusion of Law No. 47, above, the ALJ finds it reasonable and equitable for Manteca to be ordered to provide Student compensatory services as detailed in the Legal Conclusions and the Order below.

49. Hour-for-hour relief for a denial of FAPE is not required by law. (*Parents of Student W. v. Puyallup Sch. Dist., No. 3, supra*, 31 F.3d at p.1497.) Neither is it prohibited, and at a minimum it can form a beginning basis for calculating relief, in the absence of a better measure. Appropriate relief in this case must also avoid interfering with Student's ongoing education (assuming Parents return him to the public schools), and avoid giving him more work than he can do. Therefore, the creation of a bank of hours of tutoring and behavioral support to be administered flexibly by Parents is more equitable than imposition of a rigid schedule.

50. Student's fourth grade year would typically include 180 days of instruction. Fifth grade started on August 6, 2015, and Student left school on or about January 28, 2016.[15] According to the district's online calendar (at http://www.mantecausd.net/schools/k-8-a-l-/golden-west/2015-2016-school-calendar [as of May 16, 2016]), that period included 102 instructional days. Student is therefore entitled to some form of relief for denial of FAPE for a period of approximately 282 (180 + 102) instructional days. Since the nature of the denial was that inadequate attention was paid to Student's needs and progress in reading, mathematics, and behavior, an appropriate award would focus on tutoring and counseling to compensate for the educational benefits he has lost.

[15] Parents voluntarily withdrew Student from school. They were considering a charter school in January 2016, but the record does not identify Student's current placement.

51. 282 instructional days roughly equates to 56 weeks. It is unlikely Student could tolerate, or benefit from, more than five hours a week of reading tutoring, and two hours a week of math instruction. Student will therefore be awarded 280 hours of reading tutoring (the equivalent of 5 hours weekly for 56 weeks), and 112 hours of math tutoring (the equivalent of 2 hours a week for 56 weeks), and 56 hours of counseling (a standard once-a-week schedule). Whether these hours are used during or after normal class hours, on weekends, holidays or during summers will be left to the discretion of Parents, except that if the chosen counselor is a school employee, Parents may not require counseling outside of school hours. All sessions must be used by June 30, 2020.

ORDER

1. Manteca shall identify an appropriately qualified and credentialed special education teacher, with experience teaching reading to students at Student's grade level, to tutor Student in reading on a one-to-one basis. Manteca shall create and administer a bank of 280 hours for this purpose, upon which Parents can draw in their discretion. In consultation with this tutor, Parents shall select a reputable, research-based reading program for this instruction, such as (but not limited to) LindaMood Bell or Edmark Functional Reading, as long as the program is suitable for Student's reading level and is to be taught in person and not on line. Manteca shall provide the necessary materials. The instructor shall use this program consistently, unless data shows that it is ineffective with Student, in which case Parents shall select another program to use consistently.

2. Manteca shall also identify an appropriately qualified and credentialed special education teacher (who may but need not be the same person as the reading tutor) to tutor Student in mathematics on a one-to-one basis for 112 hours. Manteca shall provide the necessary materials. In consultation with this tutor, Parents shall select

a reputable, research-based mathematics program for the math portion of this instruction, such as (but not limited to) Making Math Real, so long as the program is suitable for Student's level of math skills and is to be taught in person and not on line. The instructor shall use this program consistently, unless data show that it is ineffective with Student, in which case Parents shall select another program to use consistently.

3. Manteca shall also provide 56 hours of counseling to Student by a credentialed or licensed counselor or professional, to be selected by Parents from a list of at least three choices selected by Manteca. If the chosen counselor is a school employee, Parents may not require counseling outside of school hours.

4. Manteca shall fund the relief above, and shall begin to implement it within 45 days of the date of this Order. The tutoring and counseling may be implemented in or out of the school setting, with the exception stated in paragraph 3 above. Parents may decide when these sessions are used, and whether they are used during the school year, during summer, or during other times school is not in session. Any cancellations of sessions by providers will be credited to Student. Scheduled student absences, and absences with more than 24 hours' notice given to the provider, will be credited to Student. Any Student absences with less than 24 hours' notice given to the provider will not be credited to Student. All sessions must be used by June 30, 2020, and after that date Student will not be entitled to relief under this Order.

5. These services are compensatory, so Student's entitlement to them does not end if Student moves out of the District before the services are fully provided.

6. Any of the relief accorded above can be modified by a written agreement between the parties. An IEP can constitute such a writing, and the parties can modify this Order in an IEP as long as the IEP expressly so states.

7. All 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. Student prevailed on Issues 1.d, 1.g, 1.h, and 1.m. Manteca prevailed on Issues 1.c, 1.e, 1.f, 1.o, 2.a, and 2.c, and on its Issue. The remaining issues were not decided.

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: May 27, 2016

/s/

CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings