

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,
v.

HUNTINGTON BEACH CITY SCHOOL
DISTRICT,

OAH Case No. 2016040336

HUNTINGTON BEACH CITY SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016090420

DECISION

On April 1, 2016, Student filed a due process hearing request (complaint), (OAH Case No. 2016040336) with the Office of Administrative Hearings, State of California, naming Huntington Beach City School District. On September 9, 2016, District filed a due process hearing request (complaint), (OAH Case No. 2016090420) naming Student. On September 16, 2016, OAH granted Student's request to amend his complaint. On September 26, 2016, OAH consolidated Student's amended complaint with District's complaint. On September 30, 2016, OAH granted the joint motion to continue the consolidated matters. Administrative Law Judge Judith L. Pasewark heard this matter in Huntington Beach, California on November 29, 30, and December 1, 7, and 8, 2016.

Timothy A. Adams and Lauren-Ashley L. Caron, Attorneys at Law, represented Student. Mother and Father attended the hearing each day on behalf of Student. Student did not attend the hearing.

Ernest B. Bell and Kirsten Zittlau, Attorneys at Law, represented District. Nancy Finch-Heuerman, Director of West Orange County Consortium of Special Education and Ingrid Jaimes, District autism program specialist, attended the hearing on behalf of District.

At the parties' request, OAH continued the hearing for the parties to file written closing arguments. The record closed on January 3, 2017, upon receipt of closing briefs from the parties.

ISSUES

STUDENT'S ISSUES:

- 1) Did District fail to fulfill its child find¹ obligation by failing to refer Student for a special education assessment until March 2015?
- 2) Did District deny Student a free appropriate public education by failing to offer adequate goals, services, and placement in its April 2, 2015 individualized education program to meet Student's unique needs?
- 3) Did District deny Student a FAPE by failing to offer adequate goals, services, and placement in its May 6, 2015 IEP to meet Student's unique needs?
- 4) Did District deny Student a FAPE by failing to offer adequate goals, services, and placement in its June 10, 2015 IEP to meet Student's unique needs?

¹ Child find refers to a school district's affirmative obligation to locate, identify and evaluate children who may be in need of special education and related services.

5) Did District deny Student a FAPE by failing to offer adequate of goals, services, and placement in its June 15, 2015 IEP to meet Student's unique needs?

6) Did District deny Student a FAPE by failing to offer adequate of goals, services, and placement in its September 2, 2016 IEP to meet Student's unique needs?

DISTRICT'S ISSUE:

1) Is District's IEP dated September 2, 2016 offer of a FAPE appropriate such that District may implement the IEP without parental consent and is not obligated to fund Student's private placement?

SUMMARY OF DECISION

District failed to fulfill its child find duties when it failed to appropriately respond to parental concerns and Student's educational difficulties prior to January 29, 2015. District was aware of Student's academic struggles in the classroom and at home. District modified homework, added interventions, and referred Student to a resource program for remedial reading services and informal assessment without parental knowledge. By doing so, District denied Student a FAPE between September 2014 and January 29, 2015, at which time District agreed to assess Student for special education and related services. Parents are awarded reimbursement for out-of-pocket private tutoring costs for this period.

After formal District assessments, District found Student eligible for special education and related services under the eligibility categories of specific learning disability and speech and language impairment. District's initial offer of a FAPE, as presented in the April 2, 2015 IEP failed to offer Student sufficient goals and services to address her areas of need and denied Student a FAPE. The subsequent IEP addenda, developed on May 6, June 10, and June 15, 2015, failed to adequately correct the defects and omissions of the April 2, 2015 IEP, thereby continuing to deny Student a

FAPE. Parents are awarded reimbursement for Student's educational expenses related to enrollment at Prentice School for the 2015-2016 school year.

After extensive independent evaluations in all areas of Student's suspected needs, District held an IEP team meeting on September 2, 2016. District's offer of a FAPE on September 2, 2016, considered and incorporated a significant amount of the recommendations from the independent assessors, as well as progress information from Prentice, resulting in appropriate goals and accommodations, as well as sufficient services to support the goals. While Parents preferred Student's continuing placement at Prentice, District's September 2, 2016 offer of placement at Moffett Elementary School was appropriate and presented the least restrictive placement for Student. The September 2, 2016 IEP constituted a FAPE for Student, and District is not obligated to fund Student's private placement for the 2016-2017 school year.

FACTUAL FINDINGS

BACKGROUND

1. Student was eight years old at the time of hearing and resided with her parents within the boundaries of District at all relevant times. On April 2, 2015, during the first grade, Student qualified for special education and related services under the categories of specific learning disability and speech or language impairment. In August 2015, shortly before the commencement of her second grade year, Parents unilaterally placed Student in a first/second grade combination class at Prentice School, a non-public school in Tustin, California, where she remained through the 2016-2017 school year.

CHILD FIND

2. Student began attending a District kindergarten class at Moffett Elementary School for the 2013-2014 school year. Early on, Mother became concerned

Student was not keeping up academically.² She struggled with letters and numbers, both in identification and decoding. Student struggled with math and complained it was too hard for her. Student developed increasing anxiety in the form of meltdowns at home, stomach aches, and nightmares about school. Student was aware she was academically behind her peers, and she did not want to go to school.

3. As early as September 16, 2013, Mother began communicating with Student's kindergarten teacher, Annie Grant, regarding Student's academic struggles and anxieties. Many of these communications were verbal, with Ms. Grant and other Moffett staff members. A number of concerns, however, were expressed by email to Ms. Grant over the course of the school year. Mother raised concerns about Student's lack of progress and testing scores; she asked how to improve Student's areas of weaknesses. Mother described Student's anxieties and resulting exhaustion and illnesses.

4. Ms. Grant was aware of Mother's concerns, including Student's academic and speech (articulation) difficulties, but felt Student's limited progress remained age appropriate. For example, it was not uncommon for five-year-old children to have difficulties with articulation; and academically, young children grew and progressed at different rates. Admittedly, Student received extra reading assistance on some days, but students were not required to read by the end of kindergarten. Ms. Grant found no cause for concern. She had previously referred children for assessment, but only in cases where the child was not making progress. Ms. Grant believed Student made amazing progress, retained what she learned, and met grade level standards in all areas. Although Mother reported incidents of anxiety and stress at home, Ms. Grant found

² Student's older brother, a highly gifted student, also attended Moffett. Comparatively, Student struggled to progress, while her brother easily attained academic progress.

Student to be a delight in class, and happy to be in school. Student's behaviors were those of a typical five year old. As a result, District did not offer to assess Student, and no interventions were initiated during the 2013-2014 school year. Not knowing what else to do, Parents obtained tutoring services through Kumon Learning Center.

5. Mother's concerns continued in the 2014-2015 school year, which commenced on September 3, 2014. Mother continued to actively communicate with Lyndsey Kent,³ Student's first grade teacher. Mother continued to monitor Student's progress. Mother and teacher frequently communicated by email throughout the school year. The emails indicated a progression of concern regarding Student's progress. Mother was very worried about Student's meltdowns at home over difficulties with school work, which ranged from tantrums to bed wetting. In response Ms. Kent suggested increased work on writing, and sight words; using Book Bag, a system to get students reading, for additional reading support at home; and the "filtering down" or modification of math lessons to lessen Student's frustration. Mother maintained grade-level expectations for Student's academic success, and continued to see Student struggling with her school work at home. Ms. Kent, on the other hand, found Student within average ranges in all areas. Student was a typical first grader, and showed no anxiety at school.

6. Ms. Kent was aware of District's child find obligations. She had referred students in the past to a student success team meeting, as the first step in child find to "get the process started" to determine whether special education assessments were needed. In 2014, Ms. Kent believed Student did not have any disabilities. She estimated

³ Ms. Kent had a bachelor's degree in psychology and held a teaching credential for multiple subjects. She was a general education elementary school teacher for 16 years. Ms. Kent did not have a special education credential.

that one-half of the students in her class participated in Book Bag, and she did not equate using Book Bag with an implication of a reading disability. She offered Book Bag to Student in response to Mother's request to increase Student's reading program. Other programs, such as the writing folder, were offered to every student in the class. Ms. Kent found Student's only weakness to be decoding. Student's decoding speed was slower than others' in class, but it was still in the average range. She did not believe she lowered grade-level expectations for Student by lessening homework, but rather was responding to parental concern regarding Student's anxiety. Ms. Kent was not concerned by Student's assessments, because assessment scores could differ from what happened in the classroom experience due to the testing environment. Ms. Kent did not refer Student for special education assessment because she did not believe Student had a learning disability.

7. In November 2014, Ms. Kent referred Student to a reading intervention group for observation by Lauren Ungar,⁴ a special education teacher and District reading specialist. Ms. Kent continued to believe Student did not have a disability, but acknowledged Student was struggling with reading. Ms. Kent also sent other struggling students to Ms. Ungar. Mother inquired whether Ms. Ungar's observations were part of a formal assessment, and was informed that no formal assessment would happen until after the student success team met and all agreed an assessment was necessary.

8. Ms. Ungar conducted what she defined as a reading screening prior to the student success team meeting, based upon the referral from Ms. Kent. The screening

⁴ Ms. Ungar held a master's degree in special education. She had a credential in multiple subjects with an authorization to teach English language learners, and a credential for teaching both mild/moderate and moderate/severe disabilities.

allowed Ms. Ungar to get to know Student so she could advise the student success team on what programs would benefit Student.

9. The student success team meeting was held after Thanksgiving break on December 4, 2014. Parents, Moffett's principal Michael Andrzejewski, school psychologist Lisa Endelman,⁵ Ms. Kent, and Ms. Ungar attended the meeting. Ms. Kent recalled the student success team meeting was convened due to parental concerns expressed in emails and voiced to both Mr. Andrzejewski and her. At the time of the student success team meeting, Student had no formal diagnosis of any disability, but did exhibit several areas of concern. The team noted Student struggled in language arts, had difficulties with recall, was inconsistent in her reading performance, got behind on her class work, and needed more support. It was also noted that some of these areas of concern existed in kindergarten. Ms. Kent acknowledged these areas of weakness, but did not express concern, as Student remained in the average range for first graders; she had other students in her class with skills similar to Student.

10. Ms. Ungar thought Student did not require special education at that time. Student could decode, although slowly. Because it was hard for Student to decode, it was also hard for her to answer comprehension questions. Student comprehended when passages were read to her. Ms. Ungar believed that once Student obtained decoding skills, increased progress in comprehension and writing would follow. Ms. Ungar also believed Student's weaknesses were not severe, and Student could build on

⁵Ms. Endelman earned a bachelor's degree in psychology, master's degree in counseling, and a master's degree in school psychology. She is a licensed educational psychologist, and holds pupil personnel service credentials in school psychology, school counseling and child welfare and attendance. She is also a certified behavior intervention case manager.

her skills through interventions. Ms. Ungar wanted additional time to implement Reading Mastery interventions and monitor Student's progress.

11. District participants noted Student had already participated in two intervention programs, namely Project Read and Reading Mastery; she was receiving small group support and instruction; she was receiving frequent reminders and notices to remain on task; and she was given individual support as needed. The student success team discussed whether Student would make progress with her reading with significant individualized intervention. In essence, the team determined Student was already getting the benefit of reading interventions without the need for an individualized education plan. District did not consider whether Student's private reading tutoring contributed to Student's progress.

12. Mr. Andrzejewski recalled the student success team meeting differently. Parents did not request assessments, although special education procedures were discussed at the meeting. District did not refuse to assess Student, but instead, all team members, including Parents, agreed to monitor Student and convene another student success team meeting in March 2015 to measure Student's progress and determine if further interventions or a special education assessment was needed.

13. Ms. Kent also indicated Parents did not request assessments; they consented to the student success team action plan. In addition to the reading interventions, Ms. Kent would continue with interventions already in place in her classroom, such as appropriate academic grouping and extra support, which were things she automatically did as a first grade teacher.

14. Mr. Andrzejewski regularly observed Student on campus and frequently communicated with Mother. He also did not believe Student had a disability at this time. He was aware Student was given extra reading assistance in class, but believed she was at grade level with the interventions already being provided.

15. Student formally began the Reading Mastery program in January 2015. The program was provided to Student as an intervention rather than as part of an IEP. Student continued to receive private reading tutoring.

16. On January 17, 2015, Mr. Andrzejewski met with Mother. Mother requested assessments and Mr. Andrzejewski agreed to begin the assessment process.

17. On February 2, 2015, Parents had Student privately assessed at the Stowell Learning Center.⁶ The purpose of the Stowell assessment was to identify the weaknesses in underlying learning skills and basic academic skills that kept Student from learning and functioning as comfortably and independently, and to determine the best course of action for improving and correcting those challenges. Stowell informed Parents that Student was a "classic dyslexic."

18. The Stowell assessment report indicated Student was experiencing challenges in several areas: (1) neuro developmental or core learning skill development; (2) auditory processing; (3) disorientation and neuro-timing when reading; and (4) dyslexia. While Stowell identified these areas of weakness, the information contained in the assessment report remained unspecific as to Student, and provided little more than general phrase definitions, and examples of how such weakness could affect anyone. This assessment report however, was not provided to District prior to District assessments or Student's initial IEP team meeting.

⁶Stowell was a private tutoring center whose educational strategies espoused that academic and social success depended upon a solid foundation of cognitive learning. Basic core learning skills, processing skills, executive functioning, and foundational academic skills must be developed before attaining higher learning and subject content.

19. The Stowell assessment report professed that these challenges could be permanently improved or corrected through cognitive or learning skills, and training. Stowell recommend a series of specialized programs and therapies, consisting of 92 hours (4.5 hours per week) at Stowell, plus daily reinforcement of Stowell instruction at home. Parents enrolled Student in the Stowell program.

DISTRICT'S ASSESSMENTS

20. On January 29, 2015, District prepared an assessment plan for special education and related services. Parents signed and returned the assessment plan to District on February 5, 2015.

21. Ms. Endelman headed District's multidisciplinary psycho educational assessment team and prepared the written assessment report dated April 2, 2015. The assessment team consisted of Ms. Endelman, Ms. Ungar, speech-language pathologist, Nicole Graves,⁷ and a school nurse. District conducted standardized testing, and observed Student in the classroom and during the assessments. District reviewed Student's educational and medical histories, and Student and Parents were interviewed as part of the assessment. The assessment team was also aware of the student success team's findings and recommendations, and Student's participation in the resource support program reading programs. The Stowell reading program was not mentioned at this time.

22. Ms. Endelman administered the Wechsler Intelligence Scale for Children-Fifth Edition, to measure Student's cognitive levels, and found Student's cognitive

⁷ Ms. Graves had a master's degree in speech-language pathology and was a licensed speech-language pathologist. She was also credentialed in speech-language services.

abilities were solidly in the average range. There were no statistically significant discrepancies found between any of Student's cognitive test areas, with the exception of processing speed (average range) and verbal comprehension (high average range).

23. Ms. Ungar measured Student's academic performance with the Woodcock-Johnson IV Tests of Achievements, which included eleven subtests: five in reading; three in written language; and three in mathematics. Each area tested included a skills assessment, a fluency assessment, and an applications assessment. She also administered the Kaufman Educational Achievement Test-3, consisting of nine composites, measuring key academic skills in reading, math, written language, and oral language.

24. In both the Woodcock-Johnson and Kaufman reading assessments, Student scored below average. In reading comprehension, once the visual clues from pictures were removed, Student was unable to read the sentence. On word attack and oral reading, Student scored below average. On sentence fluency, she was unable to read the sentences, again scoring in the below average range. On the phonemic awareness portion of the Kaufman, which measured Student's ability to blend words and sounds, Student scored in the average range.

25. Student's writing abilities were also in the below average range in all three areas -- spelling, writing complete sentences, and writing samples. In each of the three math areas tested, Student scored in the average range.

26. Ms. Endelman administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, sixth edition, to measure Student's ability to visually process shapes and reproduce them using fine motor skills. Student scored within the below average range. While Student could draw most basic forms and complete age appropriate integration, she had more difficulty when it came to the integration of shapes. Ms. Endelman concluded, however, that Student's difficulties were not unusual

for her age, and the skills tested may have developed over time. Overall, Student's skills in this area showed a slight weakness when compared to her cognitive abilities.

27. Mother completed the Attention-Deficit/Hyperactivity Disorder Test ratings scales, which were related to the three core symptoms of ADHD, and identified the most common behavioral problems of ADHD. Mother rated Student as having a below average probability of having ADHD, however she did indicate Student showed an average amount of inattentive behaviors. These scores contradicted Mother's scores on the Conners-3, where she rated Student as very elevated in the areas of inattention, learning problems, executive functioning, and aggression. She scored Student in the elevated range in hyperactivity, impulsivity, and peer relations. Student's teacher, Ms. Kent, also completed the Conners-3, and rated Student as elevated in the areas of learning problems and executive functioning. Further, pursuant to the Diagnostic and Statistical Manual of Mental Disorders, fourth edition, commonly known as the DSM-IV, Ms. Kent scored Student in the average range for ADHD, conduct disorder, and oppositional defiant disorder.

28. Although Mother noted weaknesses in the area of attention, Ms. Kent's scores did not endorse inattentive behaviors in the classroom. Given that some inattentive behaviors were also observed during the assessment process, Ms. Endelman concluded Student had a very mild attention processing disorder.

29. Ms. Graves assessed Student's speech and language, through clinical observations and by using standardized testing tools. Student completed the Clinical Evaluation of Language Fundamentals-5, which evaluated semantics; morphology and syntax; and receptive language, and scored in the average range in all subtests. Neither receptive nor expressive language were areas of need for Student. On the Goldman-Fristoe Test of Articulation, however, Student exhibited deficits in the areas of speech

production and articulation. Student had a noticeable frontal lisp when producing a variety of different speech sounds. Articulation was an area of need for Student.

APRIL 2, 2015 IEP

30. District held Student's initial IEP team meeting on April 2, 2015. Parents, Ms. Endelman, Mr. Andrzejewski, Ms. Ungar, Ms. Graves, and Ms. Kent attended the IEP team meeting. Parents waived the presence of District's nurse. All other required participants were present for the IEP team meeting. Parents were provided their procedural rights and safeguards, and a copy of the assessment reports.

31. The IEP team reviewed Student's psycho educational assessments. Student was below average in letter-word identification. Student's sight word identification remained at the kindergarten level. She could not read sentences without visual clues from pictures. The IEP team noted Student's spelling skills were in the below average range, and Student reversed the letters "p" and "b." She scored below average in writing her name and complete sentences. Gross motor development, such as handwriting, and social emotional/behavioral issues, such as meltdowns at home, somatic illnesses, and aversion to school as continually reported by Mother, were not reported in the IEP document.

32. The IEP document reports the IEP team determined Student had unique needs in the areas of reading decoding, reading comprehension, articulation, word recognition (sight words) and phonics (consonant-vowel-consonant or CVC words). The IEP team concluded Student qualified for special education under the eligibility criteria for specific learning disability based upon the existence of a severe discrepancy between Student's intellectual ability and academic achievement in reading, reading comprehension, math reasoning, and written language. The IEP team did not find Student's demonstrated processing disorders in the area of attention and sensory-

motor integration, to be areas of need as had been noted in District's assessment findings.

33. The IEP team created a speech and language goal to address Student's articulation and frontal lisp. In support of this goal, District offered 30 minutes of speech therapy, eight times per month.

34. Ms. Ungar crafted the academic goals. Ms. Ungar was aware Student received reading intervention from Stowell. She believed Stowell was ineffective and too intense for Student. Ms. Ungar created two academic goals for Student; one intended to increase Student's fluency and accuracy with sight words at the kindergarten grade level; the other intended to increase Student's decoding skills of CVC words. In support of the reading goals, District offered 30 minutes per day of specialized academic instruction in the resource support program classroom, where Student would also continue to participate in the remedial Project Read and Reading Mastery programs.

35. Ms. Kent disagreed with other members of the IEP team. She did not believe Student required a special education setting for any area or in any subject. Ms. Kent acknowledged she had no familiarity with the assessment tools used, and she relied on the expertise of other IEP team members to determining the assessments' accuracy. She believed Student's articulation deficit was typical of a first grader. Ms. Kent believed Student did not require occupational therapy as her handwriting was average for a first grader. She agreed focusing on decoding and sight words was appropriate. She believed Student's academic skills were average, and thought the IEP goals represented "extra help" to be provided in the resource program. Ms. Kent thought 30 minutes per day was an appropriate level of support because 30 minutes was a long time for any first grader to pay attention. Further, Ms. Kent intended to continue her own interventions in the classroom.

36. District found Student's handwriting legible. Her writing only became sloppier when she was required to focus on content. Therefore, District did not offer Student occupational therapy.

37. District did not offer Student extended school year services because it believed Student's cognitive abilities and memory were in the average range and that Student did not require reteaching.

38. The IEP team designated additional accommodations to support Student, which included repeating directions, frequent checks for understanding, Student repeating directions back to the teacher, breaking down or segmenting directions, visual supports, and preferential seating near good peer models.

39. The IEP team determined Student's placement would remain in the general education classroom. The IEP team concluded Student did not require a non-public school or smaller classes. District concluded it would have been a disservice to Student to spend more time in specialized academic instruction when she could function in the general education environment. Student's speech and language support and specialized academic instruction support required pull-out services, as Student would have difficulty receiving educational benefit in the classroom due to the "intensity of her needs in reading and articulation."

40. Parents consented to the April 2, 2015 IEP. Despite that consent, Mother was disappointed. Mother emailed Mr. Andrzejewski after the meeting to express her discomfort with the IEP goals, which she thought were mediocre, and requested another meeting.

MAY 6, 2015 IEP ADDENDUM

41. District convened an IEP team meeting on May 6, 2015, at Parent's request. Parents attended with their advocate, Rosalind Frileck. Parents remained concerned about Student's progress. For the first time, Parents provided District with the

Stowell assessment report and reported on the 4.5 hours per week of intensive reading therapy Student received at Stowell. District made no changes in the primary structure of the April 2, 2015 IEP. At Parents' request, the IEP team added access to Book share, a program of audio books, to assist Student in the areas of reading decoding and reading comprehension. An accommodation of writing assistance was added. District agreed to perform an occupational therapy assessment.

ADDITIONAL ASSESSMENTS

42. Stowell suggested an auditory processing deficit might be a possible area of weakness for Student and Parents privately obtained an auditory processing deficit disorder evaluation from Providence Speech and Hearing Center. Student's composite scores on all subtests found that Student's global auditory processing performance was generally in the normal range. Comprehensive batteries suggested Student's performance was grossly age appropriate amongst her peers. Conversely, there was a consistent left ear weakness in dichotic speech tasks, which suggested mild auditory integration processing difficulties. The June 3, 2015 assessment report recommended: (1) an occupational therapy assessment to rule out a sensory integration deficit; (2) a well-structured, "hands on" learning environment; (3) providing Student with a syllabus or topics in advance to increase linguistic familiarity for class material; and (4) providing a buddy system to accommodate note-taking.

43. Grace Yi,⁸ District occupational therapist, conducted an occupational therapy assessment in May and June 2015. The purpose of the assessment was to evaluate parental concerns regarding Student's fine motor and visual motor skills and to

⁸ Dr. Yi was a doctor of occupational therapy, and a licensed occupational therapist. At the time of the hearing, she was employed as an occupational therapist for the West Orange County Consortium for Special Education.

determine if Student required educationally related occupational therapy services. The assessment included standardized testing, review of handwriting samples, observations, interviews with Mother and Ms. Kent, and a records review.

44. Dr. Yi administered the Bruininks-Oseretsky Test of Motor Proficiency, second edition, including the fine motor precision, fine motor integration, and manual dexterity subtests. She also administered the Evaluation Tool of Children's Handwriting. Student scored within the average range on these tests. Student utilized a lateral tripod grasp with her right hand when holding her writing instrument. She rushed through writing tasks, which impacted her legibility. Student had difficulty writing her uppercase letters in sequential order and from memory. She was able to copy sentences with a visual model printed directly above the line with functional legibility and adequate spacing. Her legibility decreased when she copied sentences from a separate sheet of paper and from a smart board. When completing writing tasks without a visual model, Student had decreased legibility, lack of spacing, inconsistent alignment of letters within boundary lines, and also had difficulty with spelling. Student demonstrated functional scissor skills with good accuracy.

45. Dr. Yi concluded that visual motor integration (handwriting) was a possible unique need for Student. She recommended accommodations: (1) pencil grip and adapted paper if needed; (2) a finger spacer tool for spacing between words; and (3) transferring of information that is to be copied from board to paper and allowing Student to copy at desktop.

JUNE 10, 2015 IEP ADDENDUM

46. An addendum IEP team meeting was held on June 10, 2015, to review the occupational therapy report and discuss additional goals.

47. Parents proposed goals for writing and handwriting. Student's reading goals were amended. Ms. Ungar reported that Student was at grade level for listening

comprehension, so no goal was needed. She also explained that a reading comprehension goal would be considered once Student was reading fluently. Parents reported on Student's progress at Stowell, and the variety of academic skills used in that setting.

48. Dr. Yi opined Student possessed average fine motor skills. Her tripod grip was functional, and her writing was better when copying than when writing with no visual model. Her skills were functional, but given parental concerns, Dr. Yi recommended an occupational therapy goal and services to refine Student's legibility. Dr. Yi, however, believed the inclusion of occupational therapy services was offered as a proactive intervention, not a necessary service for Student to access her education.

49. District added 30 minutes per week of group collaboration occupational therapy services to be provided in a push-in model. In consideration of Parents' proposed goals, the IEP team added a new writing convention goal and new handwriting goal. The IEP team also modified Student's initial three goals. Student's specialized academic instruction was increased to 60 minutes per day; however, it appears a portion of this time was dedicated to occupational therapy services. Finally, District offered Student extended school year services for speech and language of 30 minutes per week. Parents did not sign the June 10, 2015 IEP. On June 15, 2015, however, Mother consented to an IEP addendum authorizing Student's occupational therapy services to be provided as a pull-out service in the resource support program classroom only.

PRIVATE PLACEMENT AT PRENTICE SCHOOL

50. On August 6, 2015, Parents, through their attorney, notified District they disagreed with District's offer of educational placement and services for Student. Therefore, Parents were placing Student in a non-public school, and would seek reimbursement from District for such placement, services and transportation.

51. On August 13, 2015, District provided written response to Parents' August 6, 2015 letter. District opined Student's IEP had only been implemented a short time, and Parents had not consented to the additional three goals they requested at the June 10, 2015 IEP team meeting. District continued to view the April 2, 2015 IEP and its addenda as FAPE for Student.

52. Student began attending Prentice in August 2015.

53. At hearing, Janis Huennekens,⁹ Student's second grade teacher at Prentice, provided her opinion regarding the April 2, 2015 IEP and its addenda, based upon Student's present levels of performance when she entered Prentice. Ms. Huennekens believed that, as of August 2015, the goals contained in the IEP were too low, and Student also needed goals for writing and math. She also believed Student required more specialized academic instruction time for both reading and writing.

INDEPENDENT EDUCATIONAL EVALUATIONS AND NON-DISTRICT ASSESSMENTS

54. On September 3, 2015, Parents requested independent psycho educational, occupational therapy, speech and language, and visual processing evaluations. On September 28, 2015, District granted their request to publicly fund each independent education evaluation.

⁹ Ms. Huennekens had a bachelor's degree in psychology and child development, and a master's degree in education and reading. She held a multi-subject teaching credential and taught pre-kindergarten through fifth grade. Ms. Huennekens also was Slingerland trained. She was not credentialed in special education nor was she a licensed school psychologist.

Speech and Language Assessment

55. Abby Rozenberg,¹⁰ a licensed speech-language pathologist, conducted Student's independent speech and language assessment on November 11, 2015. Ms. Rozenberg did not testify at hearing, but her assessment report was admitted into evidence. Ms. Rozenberg determined Student presented with significant deficits in several areas of speech and language functioning. Student exhibited a poor ability to formulate a coherent and cohesive narrative; her grammaticality was also impacted in lesser or impromptu tasks.

56. Student's processing skills for verbal information varied. While not in the generally deficient range, several of Student's individual skills were vulnerable. For example, on the Auditory Processing Abilities Test, Student's only significantly low score was in the passage content subtest, which required her to recall specific details in a question-answer format. On the other hand, on the Test of Narrative Language, which measured Student's ability to tell and understand stories, Student's overall score was in the average range. In this test, Student's ability to recall details and specific facts was in the above average range of functioning, however her standard score for oral narration fell in the poor range, demonstrating a lack of organization in verbal thoughts.

57. On the Test of Auditory Reasoning and Processing Skills, which measured Student's ability to use common sense and ingenuity in solving common thought problems, Student's performance suggested average skills in auditory reasoning and processing. Conversely, determining reasons was one of Student's most difficult type of questions to answer. This was consistent with Student's below average score on the

¹⁰ Ms. Rozenberg held both a bachelor's and master's degree in speech-language pathology. Among other areas, she possessed specific expertise in autism spectrum disorders, auditory processing disorders, and developmental language disorders.

determining causes subtest on the Test of Problem Solving-3 Elementary. Student's most significant area of deficit on the Test of Problem Solving was answering negative questions. While Student's skill of verbal reasoning was not itself deficient, the burden of processing the complex and unfamiliar information compromised the quality of Student's verbal responses.

58. Ms. Rozenberg conducted the Goldman-Fristoe-2: articulation test, which determined Student displayed a lateral lisp. Her standard score placed her in the severely low range of deficit. Fluency, however, was not an area of need for Student.

59. Based upon her findings, Ms. Rozenberg recommended Student participate in speech and language therapy for 30 minutes, twice weekly in small group, in addition to 30 minutes per week individually to target auditory processing weaknesses. She also recommended brainstorming and rehearsal strategies when developing narratives, so Student could deliver the information in a clearer, detailed and organized manner.

Occupational Therapy Assessment

60. Richard Furbush,¹¹ a licensed occupational therapist, conducted Student's independent occupational therapy evaluation on November 7, 2015. Mr. Furbush referenced an assessment and assessment report prepared by Dr. Jacqueline Borthwick¹²

¹¹ Mr. Furbush held a bachelor's degree in psychology, a master's degree in child and family studies with a minor in special education and psychology, and a master's degree in occupational therapy. He was a certified occupational therapist with experience in sensory integration and behavior support.

¹² Dr. Bothwick conducted a private assessment of Student which was not shared with District for consideration at the IEP team meetings in question. Dr. Bothwick did not

in determining Student's diagnoses. The School Function Assessment, and all teacher-related rating scales were conducted at Prentice. The assessments were extensive.

61. During Dr. Furbush's clinical observation, Student demonstrated difficulties with motor planning, safety, postural reactions/balance, dynamic visual-motor coordination, and feeling at ease during movements and exploration of the gym equipment.

62. Student's scores on the Test of Handwriting Skills (Revised) fell in the average to below average range. Student used her right hand with a modified three finger/thumb grasp. The longer she wrote, the less control she was able to exert as she wrote. Student had difficulty recalling the sequence of the alphabet from memory. Student also made several case errors and three reversals when completing the writing assignment. The overall quality of her writing was legible. However she tended to make formation errors which interfered with the quality of her writing. Her speed of production score was misleading because although it was in the average range, the test did not score legibility, case accuracy, or quality of letter formation.

63. On the Berry VMI Developmental Test of Visual Perception and the Developmental Test of Motor Coordination, Sixth edition, Student performed in the below average range. She made formation errors and visual spatial errors when there were multiple forms. Her performance on the motor coordination test fell in the low range of performance. Student's ability to organize and execute reproduction of simple and complex shapes was not efficient.

64. Student's scores on the Berry VMI and VMI motor coordination test were in the below average and low average range, respectively. Student had difficulty

testify at hearing. Therefore Dr. Bothwick's assessment report was not considered in this decision.

accurately, efficiently, and legibly forming letters when writing. Student's visual spatial skills were in the deficit range. When asked to build simple structures, Student reversed two of the seven blocks. As the building become more complex, Student made several errors of gross miscalculation and used incorrect but logical block placement. Without structured instruction and demonstrations, Student's errors increased. In all, Student demonstrated fine motor/visual spatial skill deficits. Specifically, the ability to draw, write, and manage the organization of visual space were areas need for Student.

65. Student completed all 17 subtests of the Sensory Integration and Praxis Test. The results of this assessment tool indicated Student had difficulty with visual-spatial processing, vestibular processing, tactile processing and praxis. Similar to her performance on the Developmental Test of Motor Coordination, noted above, formation and visual spatial errors were noted on the Sensory Integration and Praxis Test, where Student had difficulty forming figures in general and constructed parts of the forms, instead of the form as a whole. She had a relative strength in language processing. The pattern of her scores indicated difficulty with both visual and somato (sensory) praxis. Student's scores on the fine motor/visual motor skills subtest were in the deficit range. Student exhibited atypical formation errors, and had difficulty crossing the visual midline.

66. Student's scores for standing and walking balance and post-rotary nystagmus were in the deficit range. Student sought movement. Children who under-register vestibular information often appear fidgety and seek movement to remain alert and sustain attention as their endurance for seated tasks is pushed to its limits. Many times, those with vestibular processing issues have difficulty controlling their eye movements, especially when shifting from different spatial planes, from varying distances, and when there is movement involved. Decreased ability to process vestibular information has a significant impact on Student's ability to sustain focus and attention,

especially during sedentary activities. The vestibular and the visual system are linked. The vestibular system contributes to the ocular motor control relative to head movements to provide a stable visual field. Difficulty sustaining a stable visual field may have influenced Student's ability to read, i.e., losing her place on the page or copying from a blackboard. Group or team games could have been more difficult for Student where she needed to keep track of her team mates as well as a moving object, such as a ball.

67. Mr. Furbush utilized the Behavior Rating Inventory of Function, which was a rating scale completed by Mother and teacher to assess Student's executive functioning behavior at home and at school. While the scores of Mother and teacher did not parallel in most cases, each reported significant concerns in several areas. For example, Mother noted concern about Student acting on impulse. This was not a concern at school. Teacher noted Student had difficulties initiating. Student often had to be told to start her work; or she had difficulty coming up with different ways to solve a problem. This did not occur often at home.

68. Mother's and Ms. Huennekens's scores did match regarding Student's working memory and her ability to sustain the information needed to complete tasks. Student often had difficulty remembering how to follow more than one step of complex instructions; she often forgot what she was doing. Student had difficulty concentrating on assignments, and was easily distracted by noises and activities. As a result, Student required adult assistance to stay on task and often had difficulty finishing her work. This was an area of need for Student.

69. Likewise, organization and ability to monitor herself were areas of need for Student. Student had difficulty managing current and future-oriented task demands in the forms of planning, anticipating sequential time management, and organization skills. Student often completed her assignments, but forgot to hand them in. She lacked

follow-through, and became overwhelmed by large assignments. Her written work was poorly organized. Additionally, Student's backpack was often disorganized; she lost personal items and school-related materials. She was messy, and had difficulty finding things in her desk, often leaving a trail of belongings wherever she went. Student exhibited an inability to monitor herself. She did not check her work for errors, often made careless errors, left her work incomplete, or submitted sloppy work.

70. Student's scores on the Adaptive Behavior Assessment System, second edition, were consistent with other rating scales. Concerns were noted in three areas. Concerns in the classroom included Student's difficulty knowing or describing what to do in an emergency; understanding how to use the school library reference sources; being able to describe the physical location of a place of interest; the inability to read and obey common safety signs; and the inability to locate important dates on the calendar, read and follow instructions, consistently tell time, write her address, count money, and read and follow a daily schedule without reminders. Student did not consistently clean up her messes, failed to return items to designated areas, had difficulty working quietly and not disturbing others, and frequently failed to take time to complete tasks or prepare for homework. The rating scores identified school living as an area of need for Student.

71. Student needed assistance in the area of self-direction. Student often failed to complete routines or tasks within a reasonable time. She failed to ask for help with difficult assignments. She exhibited difficulty standing still or stopping a preferred activity when told to do so. Student had difficulty controlling her feelings when not getting her own way, completing non-preferred tasks, or working on one project for more than 15 minutes without reminders.

72. Mr. Furbush recommended Student participate in direct occupational therapy services twice weekly for 60 minutes per session. He recommended the service

provider be skilled in the use of sensory integrative treatment principles and that services be provided in a clinic setting with access to the necessary suspended equipment to address Student's needs. Mr. Furbush also recommended there be no interruption of services for more than two weeks.

73. In addition, Mr. Furbush recommended a developmental optometric evaluation to determine the efficiency of Student's visual processing skills. He also recommended that collaboration and consultation by an occupational therapist with educational staff take place each month to develop, implement and revise Student's accommodations.

74. One of the proposed accommodations was providing Student with opportunities throughout the day to engage in physical breaks and activities. Mr. Furbush found break times to be a critical part of Student's day, not to be taken away due to missed work or as a consequence. He also recommended participation in social groups and physical activities, and extra-curricular activities to promote peer interaction as well as physical activity. Mr. Furbush also suggested seven goals to support Student in the areas of handwriting, organization, posture and safety, and visual processing.

75. Dr. Yi disagreed with Mr. Furbush's recommendations. She opined some of the goals were not school based; others were unnecessary or addressed in other goals. Dr. Yi believed services in a clinical setting were unnecessary, and that 30 minutes per week of occupational therapy services represented more than enough time to address any occupational therapy needs Student had.

Occular/Visual Processing Assessment

76. On September 1, 2016, Dr. Julie Ryan¹³ conducted a complete ocular and visual examination, visual efficiency, and sensori motor evaluation with a mini-developmental visual perceptual processing evaluation. These assessments were administered to confirm whether Student had a visual processing deficit and to determine the cause of Student's double vision when she was tired.

77. Dr. Ryan performed visual efficiency and sensory motor evaluations to test the efficiency with which Student used her eyes to see singly, clearly, and comfortably. These were the foundational skills used to accurately aim, coordinate, and focus her eyes. Higher level skills, such as perception and memory, evolve and depend on the development of complete and automatic use of foundational skills. If eye efficiency is not instantaneous and effortless, a student is not free to function at her highest possible level.

78. The assessments determined Student's ocular motor system was inadequate. Student did not have the ability to accurately fixate her eyes at an object and sustain the fixation while either the object moved or she moved. She was able to perform the task without associated head movement, but had inadequate stamina. Student's saccadic ability was inadequate. Saccadic eye movements are used to rapidly shift fixation from one stationary object to another, tested on two levels. Student did not accurately shift fixation between objects which contain little or no cognitive information. Her fine saccadic ability, the eye movement necessary for reading, was significantly below the expected levels for her age. Student was unable to continue saccadic or pursuit eye movements when asked to listen and respond to simple questions. Unless

¹³ Dr. Ryan was a doctor of optometry and also held a master's degree in education.

attention was totally dedicated to the saccadic or pursuit tasks, Student could not continue when asked to simultaneously process auditory information. In turn she alternated her attention from one sense to serve the other. Being able to process with both senses at one time was required for classroom success.

79. Student's ocular accommodative amplitude was abnormal, which indicated Student could not see clearly over a range of distances expected for her age. Student's ocular accommodative facility and flexibility was also abnormal. Student experienced difficulty switching from distance to near; in turn, she experienced blurry vision during distance to near in copying tasks.

80. Student displayed an esophoria (latent deviation) with inadequate divergence. This resulted in Student's difficulty maintaining single vision over prolonged near or distant tasks. Without proper eye alignment and divergence, Student required excessive effort in order to avoid double vision.

81. A visual development and processing evaluation was performed. Visual perception represents the ability to recognize and discriminate visual stimuli. The developmental learning process begins at the level of sensation, sequentially proceeds to perception, imagery, language, symbolization and finally conceptualization. Interruption of this hierarchy interferes with the functioning of more advanced cognitive levels. Those with specific visual perceptual deficits experience difficulty benefiting from teaching efforts, failing to understand and grasp concepts despite normal intelligence.

82. Student's visual fine motor skills were inadequate. The ability to correctly hold a pencil and execute rapid, small motor movements was necessary for proper reproduction of visual forms. Her scores were mildly below expected levels.

83. Student's visual motor organization and integration was below expected levels for her age. Student could not plan and execute orderly reproductions of forms onto paper, which is an integrated process requiring visual perception and fine motor

coordination. These deficiencies may be related to Student's slow perceptual information processing, failure to detect relevant features, and passing over irrelevant ones.

84. Dr. Ryan concluded Student showed significant problems in visual efficiency, resulting in her inability to efficiently take in and process information through her visual system. These types of difficulties caused Student to experience fatigue, difficulty sustaining attention, and occasional loss of place when reading. She also experienced difficulty sustaining visual attention, especially during school and reading tasks. Student's difficulties in visual perceptual processing and development centered in the areas of sensory integration, visual form discrimination of size, position, figure ground, closure, spatial judgments, directionality, visual memory, visual sequential memory, and visual organization and integration. These dysfunctions resulted in the reversal of forms or letters, as well as words, such as "was" and "saw." Additionally these deficits resulted in increased time copying assignments and reduced reading speed and comprehension; handwriting was a difficult and stressful task.

85. Dr. Ryan recommended an individualized program of optometric visual therapy to provide Student the opportunity to develop the necessary visual abilities for academic achievement. Dr. Ryan estimated treatment time to be approximately 45 minutes per week for approximately 20-24 weeks, along with prescribed home-based vision therapy. Dr. Ryan proposed 19 accommodations to support Student, many of which were already included in Student's IEP accommodations in similar form.

Prentice Report and Recommendations at the End of 2015-2016 School Year

86. On May 23, 2016, Prentice produced a written report documenting the assessments it had done in fall 2015 and winter 2016, and making recommendations for Student's education in the upcoming 2016-2017 school year. Prentice made

12 recommendations for the IEP team's consideration. Primarily, the report recommended Student continue with one-to-one and small group instruction to provide reteaching and concept building, use of the Slingerland training, and Step Up to Writing training. The other recommendations were proposed accommodations, which were similar to, if not the same, as those proposed by other assessors and already contained in Student's IEP.

87. Prentice also proposed speech and language recommendations for the 2016-2017 school year. Prentice's speech-language pathologist recommended 60 minutes per week of speech service to support Student's goal areas of oral narration, language-based problem solving, and articulation/voice. Student met her prior speech goals. The proposed 2016-2017 goals focused on achieving greater independence with oral narratives, and improving her language-based problem solving skills. Articulation therapy continued.

Psycho educational Assessment

88. Dr. Perry Passaro¹⁴ conducted the independent psycho educational assessment and prepared the written report dated July 28, 2016. Dr. Passaro was assisted by Jeanette Morgan, a license educational psychologist. His assessment report was massive and included an extensive battery of standardized testing. His testing results did not dramatically vary from those of other assessors. Instead, Dr. Passaro's

¹⁴ Dr. Passaro possessed a Ph.D. in educational psychology and master's in education. He was a licensed psychologist and also held California certification in school psychology, school counseling, and educational administration. Dr. Passaro has provided independent psycho educational assessments to many school districts in Southern California.

assessment report provided confirmation of other assessment results, and provided clarity regarding Student's deficits and classroom performance.

89. At the time of Dr. Passaro's assessment, Student attended Prentice in Ms. Huennekens' second grade classroom. Dr. Passaro observed Student at Prentice and interviewed Ms. Huennekens. Ms. Huennekens reported Student required more one-to-one attention and completed less school work than most girls her age. Student exhibited behaviors which inhibited her classroom performance, such as frequently failing to give close attention to details and making careless mistakes. Student had difficulty organizing and sustaining attention during her tasks. At times she responded too quickly to questions, and she often avoided, disliked, or was reluctant to engage in tasks which were difficult for her. Student was often distracted, lost her personal belongings, or forgot what she was supposed to do.

90. At Prentice, Student demonstrated serious inattentive behaviors in the classroom, however these behaviors were not disruptive. Ms. Huennekens reported Student's sustained attention was of most concern, as it generally impaired Student's classroom performance. Student often fidgeted with her hands or feet and squirmed in her seat. Her impulsiveness was of concern. She often talked excessively and had difficulty playing quietly. Student demonstrated anxious and withdrawn behaviors occasionally. Student's anxiety was more frequent during oral reading testing. Student appeared to have memory and word finding issues, especially during individual testing. Student's interaction skills were appropriate for her age.

91. Ms. Huennekens rated Student's level of oral expression as average; her levels of listening comprehension and reading comprehension were limited. Student's level of basic reading skill was negligible. Student's math calculation skills were average, but her level of math reasoning was limited. Student's written expression skills were limited and her level of basic writing skill was very limited.

92. At Prentice, Student was instructed at the second grade level in math calculation, math reasoning, basic writing skills, and written expression. Her level of instruction in basic reading skills and reading comprehension was at the first grade level. Classroom oral expression and listening comprehension demands were also at the first grade level.

93. Dr. Passarro also observed Student's proposed placement at Moffett. Thirty-three students were normally assigned to the general education classroom. The attention of the students varied, but the classroom was quiet and well managed. It appeared 75 percent of the students were on task at any given time.

94. Dr. Passarro also observed District's special education setting. An instructional assistant was conducting a Reading Mastery class with five students in a group. Students participated in oral reading using a multi-sensory approach, were on task, and took turns. Ashleigh Orbona, District special education teacher, reported Student would have been in this reading group if she had attended Moffett. Students who were more than one year behind in academics generally received approximately 30 minutes per day of Reading Mastery instruction. There were 160 daily lessons in the Reading Mastery program and it took approximately one-to-two days to complete a lesson.

95. As stated above, Dr. Passarro's standardized testing confirmed and clarified most of Student's prior assessment findings. Student's cognitive testing ranked Student's estimated intellectual ability in the high average range of functioning. She demonstrated deficits in multiple basic psychological processes, including attention, visual processing, and visual memory, which contributed to her academic difficulties. A statistically significant discrepancy between Student's cognitive abilities and her academic achievement in reading and written language remained, although in comparison of scores with District's assessment in spring 2015, Student made a

significant improvement in her reading comprehension. On the other hand, Student's broad math scores declined from 2015.

96. Student's scores in multiple areas on the Delis-Kaplan Executive Functioning Systems were well below her cognitive abilities, indicating a cognitive processing disorder in the area of attention. Student's working memory, or ability to acquire and store diverse information, to transform this information and present it in a new format, was in the low average range on the Stanford-Binet Intelligence Scales (Fifth Edition). The Rey Complex Figure Test, which measured Student's visual-spatial construction and memory abilities, indicated a processing disorder in visual memory. Further, the Stanford-Binet and the Rey Complex assessments ranked Student's visual processing scores in the deficit to low average ranges for elements of spatial ability, and within the deficit range for visual processing, indicating a visual processing order.

97. Student's communication/auditory processing skills were assessed through the Comprehensive Receptive and Expressive Vocabulary Test (Third Edition), the Comprehensive Test of Phonological Processing (Second Edition), and the Clinical Evaluation of Language Fundamentals (Fourth Edition) Observational and Rating Scale completed by Parents and Ms. Huennekens. Student's communication processing abilities were in the average range. However Ms. Huennekens' scores indicated Student's ability to recall her reading and ability to express herself in written language was not commensurate with her verbal ability.

98. The assessment results regarding Student's social/emotional and behavioral functioning consistently confirmed previous findings of an attention disorder.

99. Based upon his assessment findings, Dr. Passaro determined Student required a highly structured and individualized learning environment and support for the acquisition of basic academics. More intensive instructional supports, such as opportunities for one-to-one instruction or very small group instruction, were advisable

during her school day. Specifically, Dr. Passaro recommended Student's overall educational environment should: (1) provide a calm, safe, and structured environment; (2) provide a predictable, consistent daily routine; (3) include carefully planned, highly individualized adaptations and supports; (4) include direct instruction in areas of weakness; (5) include frequent assessment of Student's skills; and (6) increase independence in functional application of academics, daily living, social, and vocational skills.

100. In addition, Dr. Passaro offered examples of 23 instructional interventions and suggested 23 accommodations, all of which could be implemented at either Prentice or Moffett.

101. Student's deficits in reading and written language were responding to the multidisciplinary Slingerland methodology which she received at Prentice. Although Dr. Passaro reported the Slingerland program has shown significant improvement for students with profiles similar to Student, he did not report it was the only methodology by which Student could learn or remediate her reading skills. He acknowledged that both Slingerland and Reading Mastery were empirically well validated. At hearing, Dr. Passaro confirmed that Reading Mastery was a good program, if used correctly. He emphasized however, that at Prentice, Student received an hour or more per day of small group (no more than five students) and/or individualized reading instruction per day. In contrast, District's then-proposed placement offered 30 minutes per day of Reading Mastery instruction, which he found insufficient, because Reading Mastery lessons were between 30-45 minutes each. Student's June 10, 2015 IEP services did not appear to consistently allow her to complete a lesson meant to take one day. Therefore, under District's program, Student would not have received the sufficient intensity needed in the Reading Mastery program, pursuant the program's own guidelines.

PRENTICE SCHOOL ASSESSMENT REPORT

102. Prentice assessed its students throughout the year to provide information for teachers and parents. The scores were used to drive instruction and create baselines. Ms. Huennekens assessed Student in the fall (August 24 through September 25, 2015) and winter (December 14, 2015 through January 25, 2016). Ms. Huennekens prepared the Prentice reports, dated May 23, 2016. She observed that by the winter assessment period, Student made a lot of progress in reading and writing. Although Student was not at grade level, she was making strides. Student was more careful in her writing and now remembering to space words correctly. Student was still working on punctuation and spelling.

103. Student's academic functioning was measured using the AIMS Web, a form of curriculum-based measurement, designed to monitor progress. Student's oral reading skills fell within the borderline range. Reading maze scores, which was a supplemental measure of reading skills rated Student in the average range.

104. Student's written expression assessment included subtests for words spelled correctly, correct word sequencing, and total words written. Student scored in the below average range on all three subtests.

105. A mathematics concept and applications test was administered to assess Student's general mathematics problem-solving skills. Student scored in the below average range. Student's math computation scores, however, fell within the average range.

106. The AIMS Web assessment tools were subsequently utilized for Student's winter assessments. In each of the test areas, Student scored in the well below average range.

107. Prentice also utilized the San Diego Quick Assessment of Reading Ability to assess Student's recognition of words out of context. In the fall 2015 assessment,

Student's independent reading level was at the primer grade level; her instructional reading level was at the primer grade level; and her frustration level was at the first grade level.

108. The John's Reading Assessment was administered as an informal reading inventory. Based upon this assessment, Student's reading comprehension level was scored in the pre-primer level. When reassessed in the winter, Student comprehension had increased to the first grade level.

109. Student's decoding skills were scored at the beginning of the first grade level in fall 2015. By winter assessments, her decoding scores had increased, and she was working on sight words to increase fluency.

110. Student's writing skills were assessed with Step Up to Writing. The fall 2015 assessment found Student below basic in organization, style, and neatness, capitalization, usage, punctuation, and spelling. Student scored in the basic range for ideas and content. It was noted that Student had difficulty writing legibly with correct spacing and punctuation. She was able to produce stories, but they were unreadable, and she was unable to read back what she was trying to say. By the winter assessment, Student made a huge improvement in her writing. Her scores had increased to the proficient level in all areas except neatness, etc., which increased to the basic range.

111. The Prentice definition of progress based upon increase in scores, requires explanation. While Student's assessment raw scores at Prentice may have increased within the percentile, Student's actual percentile rankings did not increase based on normed ratings with typical peers. Given that Student's scores were low to begin with, an increase in score merely placed her higher within the same percentile rating. Thusly, Student did not "close the gap" and remained below average.

SEPTEMBER 2, 2016 IEP

112. District held an IEP team meeting on September 2, 2016, to review the independent assessment results and Prentice progress reports, and to craft District's offer of special education and related services for the 2016-2017 school year. Mr. Andrzejewski; director of student services Cathy Cornwall; program specialist Jonathan Ellis; educational specialist Ms. Orabona; general education teacher Sara Fantel; Ms. Endelman, and Dr. Yi attended the IEP team meeting on behalf of District. Parent; Mr. Adams; Prentice principal Dr. Endelman; Dr. Passaro; Mr. Furbush; Ms. Huennekens; and Ms. Rozenberg attended the IEP team meeting telephonically from Prentice.

113. Student remained eligible for special education under the primary category of specific learning disability and secondarily under the category of speech and language impairment. The IEP team meeting followed traditional protocol. Dr. Passaro, Ms. Rozenberg, and Mr. Furbush presented their assessment findings and each reviewed his/her report. Student's progress at Prentice was reviewed, and her present levels of performance determined. Goals, discussed further herein, were crafted, with an offer of corresponding related services, accommodations were created, and placement offered after consideration of the continuum of placement options.

Goals

114. The IEP team determined Student had unique needs in the areas of: (1) sight words; (2) reading decoding; (3) reading fluency; (4) reading comprehension; (5) spelling; (6) math calculation, and (7) articulation. To support these areas of need, the IEP team crafted 14 goals.

115. Goal One addressed Student's articulation, and required Student to produce the sounds of /s/ and /z/ phonemes in structured sentences.

116. Goal Two addressed Student's articulation, and required Student to produce the /sh/, /ch/, and /dg/ phonemes in short phrases of three-four words.

117. Goal Three addressed reading fluency, and was intended to increase Student's reading speed. The goal sought to increase Student's reading speed to fifty words per minute when given a second grade passage.

118. Goal Four addressed reading decoding. The goal sought to have Student sound out words and read them fluently based upon a list of second grade regularly spelled two-syllable words.

119. Goal Five addressed sight words. The goal sought to increase Student's ability to read sight words from the first grade level to the second grade level.

120. Goal Six addressed writing conventions. The goal was intended to increase Student's accuracy on capitalization and punctuation in sentences, and sought to have Student write five complete sentences with appropriate beginning capitalization and ending punctuation when given a teacher-led activity, dotted lined paper, and spelling assistance.

121. The written IEP did not contain a Goal Seven. Goal Eight addressed Student's verbal reasoning through expressive language. When presented with a verbal story about a problem situation, accompanied by a single picture, during a structured language activity, the goal required Student to answer negative questions about the scenario, and determine the cause of the problem.

122. Goal Nine addressed expressive language through oral narratives and sought to have Student construct a complete story, when given visual support, without verbal prompting.

123. Goal Ten addressed Student's organizational skills, requiring Student to demonstrate appropriate organizational skills by having all necessary items, such as

homework, paper, pencil, and textbook, available within three minutes after the classroom assignment was initiated or assigned.

124. Goal Eleven addressed Student's social/emotional and behavioral needs. The goal sought for Student to improve her regulation and coping skills by responding to prompts and utilizing coping tools, when presented with a challenging task.

125. Goal Twelve addressed reading comprehension and sought to increase Student's reading comprehension when reading a second grade passage.

126. Goal Thirteen addressed visual motor integration. The goal sought to have Student complete five complete sentences with functional legibility and adequate spacing using lined Slingerland paper.

127. Goal Fourteen addressed spelling and sought to have Student accurately spell 20 second grade level words with generalized spelling patterns.

128. Goal Fifteen addressed Student's math calculation deficit, identified by Ms. Hunnenkens, and sought to increase her below average math computation skills by having Student correctly solve 20 addition and subtractions problems up to 100 by using the strategies she had been taught (such as place value, and relationships between addition and subtraction) or by using concrete models and/or drawings.

Accommodations

129. Student's processing deficits required a substantial number of recommended supplementary aids and accommodations. The IEP team determined Student required assistive technology in the form of access to Book share to assist her in the areas of reading decoding and reading comprehension.

130. Additional accommodations were drafted directly from the independent evaluators' recommendations, such as repeated directions, frequent checks for understanding, breaking down instructions, preferred seating, visual supports, pencil

grips, Slingerland paper, copying assistance, reading math problems aloud, movement breaks, organizational strategies, and organizers.

131. Ms. Orabona provided specialized academic instruction in Moffett's Learning Center. The Learning Center was created during the 2015-2016 school year, and the on campus site where Student would receive her specialized academic instruction at Moffett. The Learning Center was designed for both general education and special education students. As of December 2016, the Learning Center supported 30 students, 15 of whom were special education students. There were two teachers and two aides. Not all of the students attended the Learning Center at the same time. Students of similar levels were placed in small groups of not more than six students for sessions that might include reading, writing, spelling, or math. Ms. Orabona utilized Reading Mastery and received annual training in its practices and procedures. She found Reading Mastery to be an effective reading program with her students.

132. Ms. Orabona participated in the September 2, 2016 IEP team meeting, and believed the proposed goals could be successfully implemented during 90 minutes per day in the Learning Center. District determined the combined placement of a general education classroom and Learning Center was the least restrictive environment for Student. Ms. Orabona explained a transition plan was unnecessary for Student. Moffett was Student's home school, her friends attended Moffett, and she was already familiar with the campus because she attended kindergarten and first grade there. Student would participate with the other students in regular back-to-school activities. The IEP team's determination of present levels of performance relied heavily on information from Prentice. Student did not exhibit social issues or significant behaviors. As a result, anxiety was not considered an area of need.

133. Ms. Huennekens participated in the IEP team meeting and provided information to the IEP team to assist in drafting goals. Many of the goals were based

upon her input as Student's second grade teacher. Ms. Hunnenkens found the academic and social-emotional goals created for the September 2, 2016 IEP appropriate. All of the goals could be implemented at Prentice or at Moffett. Additionally, Student did not exhibit problem behaviors at Prentice, and did not need a behavior plan.

134. Ms. Graves created the speech and language goals in the September 2, 2016 IEP. None of these goals were seriously disputed. At hearing, Ms. Graves explained that several of the goals created in September 2016, such as verbal reasoning and oral narrative, would have been too complex for Student prior to the second grade. She also reported that the speech and language goals could be implemented at Moffett and did not require a more restrictive environment to be successful.

District's Offer of Placement and Services

135. After discussion of the least restrictive environment and the continuum of placement options during the September 2, 2016 IEP team meeting, District made the following offer of FAPE for the 2016-2017 school year:

- 1) Placement in the general education classroom at Moffett with 90 minutes per day of specialized academic instruction in a separate classroom;
- 2) 30 minutes, eight times per month (approximately twice a week), of group speech and language services in separate classroom;
- 3) 30 minutes, four times per month (approximately once a week), of individual speech and language services in a separate classroom;
- 4) 30 minutes per week of group occupational therapy services in a separate classroom, with collaboration occupational therapy services provided within the classroom setting; and
- 5) 45 minutes per week of vision therapy services to be provided at the therapist's office.

6) Student was not offered extended school year services.

136. District's offer of FAPE was based upon its strong belief, in consideration of the information provided from the Prentice team and independent assessment information, that Student's unique needs could be effectively addressed through the supports and services available at Moffett. District believed Student did not require placement at Prentice to address all of her identified areas of need.

137. At the conclusion of the IEP team meeting, Parents stated they did not consent to the September 2, 2016 IEP. On September 7, 2016, Parents wrote to District stating that they disagreed with District's determination of placement and services and would continue Student's placement at Prentice, while seeking reimbursement from District.

EPERT OPINIONS REGARDING APRIL 2, MAY 6, JUNE 10, AND JUNE 15, 2015 AND SEPTEMBER 2, 2016 IEPs

138. Dr. Passaro reviewed the September 2, 2016 IEP at Parents' request. In a letter to Parents dated October 28, 2016, Dr. Passaro opined that District's April 2, 2015 offer could not have appropriately met Student's needs. Three goals were insufficient to address Student's needs. Student needed goals in reading comprehension and written expression. Further, District's April 2, 2015 offer did not provide a sufficient amount specialized academic instruction time to substantively address Student's academic needs. Dr. Passaro opined that "the academic program now offered by District [September 2, 2016] should have been proposed more than a year ago given Student's needs."

139. Dr. Passaro also reviewed District's offers made in the three 2015 addenda IEPs and provided the following opinions. The addition of Book share and more accommodations remained insufficient for Student. Thirty minutes of specialized academic instruction was not intensive enough to address Student's reading deficits

through Reading Mastery. District's offer of an additional 30 minutes of specialized academic instruction was an improvement and might have provided sufficient time for reading, but 60 minutes would not provide enough time to address writing and Student's other academic needs. In acknowledging that Student made progress with only 30 minutes of Reading Mastery, Dr. Passaro noted that during the same period, Student also received 4.5 hours of intensive reading tutoring from Stowell, which most likely contributed to any improvements in reading. Dr. Passaro estimated Student required between 90 and 120 minutes per day of specialized academic instruction.

140. At hearing, Dr. Passaro expressed major concern about Student's history of anxiety, as he was aware of her past psychological history. He noted the September 2, 2016 IEP did not address a plan for Student's emotional transition back to Moffett, and was concerned that the transition back to Moffett might result in higher levels of anxiety, which could impact Student's ability to access the curriculum. In his assessment, Dr. Passaro did not reach a diagnosis of an anxiety disorder, as Student was not exhibiting symptoms at Prentice. He voiced concern that a change in Student's educational environment could impact or increase her anxiety, just as it had decreased her anxiety by attending Prentice. Dr. Passaro advised that counseling and a transition plan should have been included in the September 2, 2016 IEP if Student were to return to Moffett. He also anticipated that a behavior support plan would be necessary for Student at Moffett, to help her with her anxiety and attention issues. Additionally, Dr. Passaro expressed a mild concern that Student might regress if not provided extended school year services in a district program.

141. Dr. Passaro concluded that Prentice was an appropriate program for Student and she had made progress in that program. Furthermore, Prentice appeared to be a very safe place for Student emotionally, and she experienced less evidence of

anxiety in that placement. Dr. Passaro saw no reason to move Student from Prentice, given his concerns about her mental health.

142. At hearing, Dr. Passaro also provided input regarding child find. Dyslexia is a reading disorder, not a classification of disability. It is diagnosed through assessments, which look for weakness in certain areas and which lead to a determination of a specific learning disability. Generally, children under age five are not diagnosed for a specific learning disability, as it is easier to identify a specific learning disability in older children. Further, academic progress is only one component in the diagnosis of a specific learning disability. A history of interventions, such as a student success team program, may also be a component of the diagnosis. A student success team intervention is a proactive step, and considered by many as the first step in child find, however it is not a prerequisite step required before referring a child for special education assessment.

143. Dr. Endelman¹⁵ also testified as an expert regarding child find. During Student's kindergarten and first grade years, District received numerous emails indicating Student was struggling, even with the assistance of a private tutor. The emails also documented the anxiety Student exhibited at home regarding school attendance. At school, District was aware Student was struggling with reading and required additional help.

¹⁵ Dr. Endelman held a doctorate of education degree, as well as a bachelor's degree in psychology, and master's degrees in educational psychology and counseling. He was a licensed educational psychologist and had extensive special education experience, including that of director of special education, SELPA coordinator, school psychologist and behavior specialist. His spouse, Lisa Endelman was a school psychologist for District at the time of the hearing.

144. Dr. Endelman explained that District's student success team program was a form of response-to- intervention strategies.¹⁶ Student success team intervention might be utilized as part of child find, but it was not a statutory device created to comply with child find. For example, a student success team meeting might be appropriate to determine if a child could benefit from specific response-to-intervention strategies, or to determine if a child was developing. It might also be used to determine what areas should be assessed in a referral for special education assessment. Additionally, although Student's grades suggested progress, grades should not have been the sole criteria for referral. Just as one source is not relied upon in conducting an assessment, one source should not be the basis for the decision to assess or not assess.

145. Dr. Endelman believed that in response to Parents' emails and Student's slow progress even with tutoring, it would have been appropriate to hold a meeting earlier, perhaps as a student success team meeting, to ask questions to determine if an assessment was being requested by Parents or if an assessment was appropriate. If it was determined a response to intervention was appropriate, then a plan of action needed to be developed. There were strong indications that Student's progress was uneven and she showed classic signs of a potential learning disability. Further, providing interventions in a resource program without first assessing Student was faulty, as accurate goals could not be established.

¹⁶Response-to-intervention is a program of proactive intervention strategies used for general education students, and is preferred to the previous "wait to fail" philosophy where nothing was done until a student actually failed.

146. Dr. Rienzi Haytasingh¹⁷ testified at hearing in support of District. As with Dr. Passaro and Dr. Endelman, Dr. Haytasingh provided highly professional and informative testimony. Dr. Haytasingh, however, did not observe Student either at Moffett or Prentice, and based his opinions entirely on Student's history and educational file.

147. Dr. Haytasingh opined that lack of academic progress, and lack of foundational skills or development are indicative of disability. In kindergarten, signs of a specific learning disability might include not understanding sounds, inability to name letters, inability to process sounds to connect to letters, and inability to process or hear all sounds.

148. Dr. Haytasingh explained that in kindergarten/first grade, it is a close call between a disability and a weakness. Not all children who are behind in school at this age have a disability. The brain is a spectrum of development; some children develop faster than others. Biological development may be a factor. Motivation is also a factor. In school, if a child comes to school and is motivated, that demonstrates progress. In reading Student's file, Dr. Haytasingh found no basis to suspect a disability in kindergarten. Student's report cards did not reflect a disability. Fluency, a weakness for Student, was not a core standard in kindergarten. It was not until second grade, when the standard of fluency was introduced, that Student might have begun to show gaps to suggest a learning disability.

¹⁷ Dr. Haytasingh, held a Psy.D. in school neuropsychology. He was a certified school neuropsychologist, and was certified by the American Board of School Neuropsychology. He was also a member of the California Commission on Teacher Credentialing.

149. Dr. Haytasingh acknowledged that over time, things began to shift as curriculum demands increased. By January 2015, it became appropriate to assess Student, District responded with an assessment plan in January 2015. Dr. Haytasighn opined that Mother's emails did not suggest a disability. The student success team notes did not reflect a need to refer for assessment. He noted that one-half of the students in a class are below the average, by definition.

150. Dr. Haytasingh opined anxiety is a part of everyday life. Everyone has some level of anxiety. Forty percent of children enter kindergarten with some anxiety. Student's behaviors were normal for a kindergartener. She had anxiety, but she also was a class leader and made progress.

151. With regard to District's April 2, 2015 IEP, Dr. Haytasingh explained that a reading comprehension goal was not needed at that time. Reading comprehension is not developed until basic decoding and sight words are taught. Student could comprehend oral language. Likewise, a writing goal was inappropriate. Student could not write until she could decode and spell. There was no sense to address writing until reading was mastered.

152. Dr. Haytasinh found Reading Mastery to be an effective, scientific-based methodology for teaching reading. The program was systematic, sequential, and structured. He found the addenda IEPs' goals were appropriate and the increase in specialized academic instruction was sufficient to support Student with the additional goals.

153. Ultimately, Dr. Haytasingh opined that Student could be best educated in the general education classroom with specialized academic instruction. In the general education setting, there was incidental learning; children taught each other. At Prentice, most of the students had similar disabilities, and therefore Student would have less ability to model typical peers.

Prentice¹⁸

154. Dr. Endelman, the prior principal at Prentice, provided information regarding placement at Prentice and Slingerland methodology. Prentice provided special education programs for students in kindergarten through 12th grade, focusing on students first through eighth grades. Prentice served traditional students with typical learning disabilities -- students with average cognitive abilities who struggled with language-based processing disorders, such as dyslexia and auditory and/or visual processing deficits. Several school districts in Southern California refer special education students for non-public placement at Prentice. Many of the students did not have IEPs. All Prentice teachers were credentialed and co-taught general education/special education classes. Each teacher was trained in Slingerland methodology.

155. Prentice utilized Slingerland methodology, which was a multi-sensory program designed to mitigate processing difficulties. Slingerland uses an intensive intervention approach for all content areas, including reading, writing, math, and penmanship.

156. Prentice differed from public school classrooms due to the level of advanced training required of staff, the use of the Slingerland methodology, use of

¹⁸ Testimony in this hearing acknowledged a strong connection between Student's attorney's referrals of his clients to Dr. Passaro for assessments, as well as strong connections between Dr. Passaro and Prentice. Dr. Passaro's daughter was employed at Prentice. Further, Dr. Passaro provided approximately 70 percent of Mr. Adams' referrals to Prentice. Regardless, Dr. Passaro's testimony, as well as the testimony of Dr. Endelman, remained credible and above reproach for inferences of bias or conflict of interest. Both witnesses were extensively experienced and highly qualified to testify and provide information in this hearing.

collaborative co-teaching, the level of intervention, and the provision of more instruction time per year. The first and second grades have between four and ten students in each grade, with a teacher-to-student ratio of one-to-ten. In first and second grade, very few students were at grade level. Students had access to typical peers as not every student had a disability.

157. Prentice was touted as a placement intended to “close the gap” between cognitive ability and academic performance, which is at the heart of a specific learning disability. Dr. Endelman, however, acknowledged it was atypical, even at Prentice, to close the gap in one year; it took more like two to three years of intensive intervention to do so. With Student, Prentice staff had been successful in stopping the gap from widening. Prentice staff could then work on closing the gap.

Requests for Reimbursement

158. Father testified regarding the out-of-pocket educationally related expenses Parents incurred.¹⁹

159. For the 2014-2015 school year, Parents paid Stowell Learning Center 9,766.03, and paid a reading specialist 225.00 (based on the rate of 25.00 per hour), for a total of 9,991.03.

160. For the 2015-20126 school year, Parents paid Prentice 19,726.93 for tuition, 225.00 for uniforms, and 310.00 for speech and language services, and incurred mileage expenses (at the rate of 26 miles x 0.56 x 180 days) of 2,527.20. Parents also paid 570.00 for extended school year services at Learn 2 Read Orange

¹⁹A corresponding written list of expenses incurred, along with copies of billing/payment statements, were submitted into evidence.

County and 200.00 for vision therapy from Dr. Ryan. Total out-of-pocket expenses for 2015-2016 were 23,584.16.

161. For the 2016-2017 school year to date of hearing, Parents paid Prentice 11,987.50 for tuition, 250.00 for uniforms, and 531.48 for speech and language services. Mileage was not calculated for 2016. Total out-of-pocket expenditures for 2016, not including mileage, were 13,958.98.

LEGAL CONCLUSIONS

INTRODUCTION LEGAL FRAMEWORK UNDER THE IDEA²⁰

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq; 34 C.F.R. §300.1 (2006)²¹ et seq.; Ed. Code, § 56000 et seq.; Cal Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

²⁰ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

²¹ All citations to the Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

“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).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme(*Mercer Island*) [In enacting the IDEA, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.] Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. An educational agency in formulating a special education program for a disabled pupil is not required to furnish every special service necessary to maximize the

child's potential. (*Rowley*, supra, 458 U.S. at p. 199.) Instead, an educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir.2006) 4654 F. 3d 1025, 1033.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, each party had the burden of proof on the issues they presented.

6. Under the IDEA, a FAPE is defined as special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the school standards of the state educational agency; (C) include inappropriate pre-school, elementary school, or secondary school in the state involved; and (D) are provided in conformity with the IEP required under section 1414(d) of the Act. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

STUDENT'S ISSUE 1: DID DISTRICT DENY STUDENT A FAPE BY FAILING IN ITS CHILD FIND DUTIES?

7. A school district has an affirmative, continuing obligation to identify, locate, and evaluate all children with disabilities residing within its boundaries. (20 U.S.C. § 1412(a)(3).) This duty is commonly known as "child find." The duty is not dependent on any action or inaction by parents. A school district must actively and systematically seek

out all individuals with exceptional needs who reside in the district. (Ed. Code, § 56300.) Child find applies to those children, among others, who are suspected of being a child with a disability . . . and in need of special education and related services, even though they are advancing from grade to grade. (34 C.F.R. 300.111 (a).)

8. A student shall be referred for special education instruction and services only after the resources of the regular education program have been considered, and where appropriate, utilized. (Ed. Code, § 56303.) Conversely, the suspicion that a student may have an impairment that is affecting the student's educational performance, and requires special education, is sufficient to trigger a need to assess. (*Park v. Anaheim Union High School Dist., et. al.* (9th Cir. 2006) 464 F. Supp. 1025, 1032, citing Ed. Code, § 56320.) The threshold for suspecting that a child has a disability is relatively low. A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Dept. of Educ. v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1195.) A failure under child find is a procedural violation of the IDEA. (*Cari Rae S., (ibid); Park v. Anaheim, supra*, 464 F.3d at p. 1032.)

9. The Supreme Court recognized the importance of adhering to the procedural requirements of the IDEA. The analysis of whether a student has been provide a FAPE is two-fold: (1) the school district must comply with the procedural requirements of the Act, and (2) the IEP must be reasonably calculated to provide the child with educational benefits. (*Rowley, supra*, 458 U.S. at p. 198.) While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d at 977, 892.) To constitute a denial of FAPE, procedural violations must result in deprivation of educational benefit or a serious infringement of the parent's opportunity to participate in the IEP process. (*W.G., et al. v.*

Board of Trustees of Target Range School Dist., etc. (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*) [superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 939.).]

10. District was aware of Mother's concerns regarding Student's anxiety and lack of progress during the 2013-2014 kindergarten school year. While it may be difficult to establish a learning disability in children under five years of age, whether Student was progressing as a typical kindergartener is moot due to the California statute of limitations. Nevertheless, the evidence established Mother persistently inquired with District personnel regarding Student's lack of academic progress and anxiety at home, which impacted her desire to attend school. The suspicions introduced in kindergarten continued in an ongoing and increasing progression of concerns early in the 2014-2015 first grade school year.

11. Ms. Kent's qualifications as a general education teacher are not in question. Her lack of expertise in the areas of disabilities, assessments, and special education in general, however, lessened her credibility and ability to formulate a suspicion Student might have a disability. The threshold for suspecting that a child has a disability is relatively low. Student's inability to decode at grade level, her struggles with sight words and spelling, and general difficulties with reading comprehension were apparent. Coupled with letter reversals and difficulties writing, there was enough evidence to conclude Student had a possible visual processing deficit or dyslexia, despite her average grades. The suspicion grew when Student's progress remained slow, in spite of the addition of outside tutoring obtained by Parents. Ms. Kent's interventions, such as the Book Bag, modification of homework, and her unilateral referral to Ms. Unger, were all noteworthy signs which created a suspicion of disability. Additionally, although maintaining Student did not exhibit anxiety at school, Ms. Kent and Mr. Andrzejewski were cognizant of Mother's repeated descriptions of Student's significant

behaviors at home that were educationally related to Student's slow progress at and frustrations with school. District's reliance on an outcome basis to determine whether to assess, i.e. equating suspicion with eligibility, is faulty. Consideration of all warning signs was warranted. Whether Student maintained average grades was only one of many factors which should have been considered in the decision to refer Student for assessment. Student's higher cognitive abilities were not considered; nor were her fatigue, or home behaviors added to the mix to develop the suspicion of disability.

12. It is immaterial whether Parents were advised of their rights regarding special education or were aware of their rights to demand assessments. The onus of the referral for special education assessment does not lie with them. It is District's duty to seek out children with disabilities and assess them. Reliance on response-to-intervention strategies, such as the student support team program, might have been appropriate as a first step, if those interventions had been implemented in 2013-2014, when Mother first contacted Ms. Grant. For District in this matter, the seeds of concern were sewn in kindergarten, and the suspicion of possible disability continued to grow at the beginning of the 2014-2015 school year.

13. Child find is a procedural violation of the IDEA. In this matter, District failed in its child find duties from September 3, 2014, until January 29, 2015, when District finally provided Student with an assessment plan. District's failure to refer Student for assessment for special education and related services deprived Student of educational benefit until the assessments were completed and the initial IEP team meeting was held on April 2, 2015, as the evidence established that District would have found Student eligible if it timely assessed Student. Further, the failure to identify and assess Student materially infringed on Parent's rights to participate in the IEP process and obtain special education services for Student. District's violation of its child find duty denied Student a FAPE.

STUDENT'S ISSUES 2, 3, 4, AND 5: DID THE APRIL 2, 2015 IEP AND MAY 6, JUNE 10, AND JUNE 15, 2015 ADDENDA DENY STUDENT A FAPE?²²

14. An IEP is a written document which details the student's current levels of academic and functional performance, provides a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with on-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed.Code, § 56345, subd. (a).)

15. When developing an IEP, the team must consider the strengths of the child; the concerns of the parents for enhancing their child's education; information about the child provided by or to the parents; the results of the most recent assessments; the academic, developmental, and functional needs of the child; and any lack of expected progress toward the annual goals. (20 U.S.C. § 1414(d)(3)(A), (d)(4)(A); 34 C.F.R. § 300.324(a), (b); Ed.Code, § 56341.1, subds. (a), (d).) An IEP must include a statement of measureable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability.

16. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d1141, 1149.) An IEP is "a snapshot, not a retrospective." (*Id.* at p. 1149.) It must be

²² Student's Issues 2 through 5 all address the April 2, 2015 IEP and its addenda. The application of law is the same as to each issue. To avoid redundancy, these issues have been combined under one analysis.

evaluated in terms of what was objectively reasonable when the IEP was developed.

(Ibid.)

17. Parents initially consented to the April 2, 2015 IEP, but later that day and thereafter, they expressed regret at agreeing to the goals and services offered by District. Placement at Moffett itself was not an issue at the time of the April 2, 2015 IEP or its addenda. Further, little, if any, disputed information was presented regarding Student's articulation deficit or the speech and language goal and services in relation to the April 2, 2015 IEP. Student failed to produce evidence to prove the inadequacy of the speech and language goal and services.

18. Student sustained her burden of proof and established that the goals contained in the April 2, 2015 IEP were insufficient to address all areas of Student's needs as identified in District's own assessments. In essence, District created two goals to support Student in the Reading Mastery program she had started as part of the student success team interventions. Testimony of all of the experts at hearing support a finding that District's assessments contained significant information which was overlooked or ignored.

19. Student's was eligible for special education under the category of specific learning disability. In determining her eligibility, the IEP stated a severe discrepancy existed between Student's intellectual ability and academic achievement in reading, reading comprehension, math reasoning, and written language. The IEP team determined Student had unique needs in the areas of reading decoding, reading comprehension, and word recognition. The IEP failed to address math reasoning or written language. Reading comprehension was not addressed nor was it discussed in relation to decoding. Spelling was a weakness connected to Student's inability to decode. Inattentive behaviors were noted and a mild attention processing disorder

identified. Student's frustration and behaviors were not considered. No goals were created to support any of these areas of need.

20. Perhaps the most glaring omission in the April 2, 2015 IEP is its lack of consideration given to occupational therapy needs. Student's visual processing deficits, as they related to both reading or fine motor skills, were not explored. For example, it was noted on several tests that once visual cues were removed, Student's reading difficulties increased. Student's fine motor skills were also impacted. Not only was Student's handwriting questionable, her ability to visually process shapes and reproduce them was below average. The more visually complex the shape, the more difficult the visual integration. Student's difficulty with formation of letters and visual-spatial skills problems further suggested the need for goals. No goals were crafted, and no occupational therapy services were offered.

21. Student also sustained her burden of proof and established that 30 minutes of specialized academic instruction was insufficient to support Student's goals and academic needs. In this area, Dr. Passaro's testimony was particularly strong. Thirty minutes per day might suffice for only two reading goals. Not only did Student need more than two goals, 30 minutes was insufficient time to provide adequate reading instruction. Student required between 90 to 120 minutes per day of intensive reading instruction. Further, implementation of Reading Mastery, the reading intervention selected by District, required more than 30 minutes per day. Both Dr. Passaro and Dr. Haytasingh found Reading Mastery to be an effective reading program. Dr. Passaro explained that Reading Mastery could be a successful program if implemented according to its technical manual. Specifically, Reading Mastery required approximately one hour to complete each daily lesson. In 30 minutes, Student could not finish a complete lesson, let alone work on goals or address other areas of need. By failing to provide enough specialized academic instruction time to properly implement District's

Reading Mastery program, Student's ability to progress in that reading program was marginalized. District contends Student made progress, albeit slow progress, in the Reading Mastery program as presented within the 30 minutes per day. This assumption failed to consider the additional 4.5 hours per week of intensive reading intervention Student concurrently received from Stowell. The April 2, 2015 IEP created insufficient goals which did not comport to all of Student's recognized areas of need, nor was 30 minutes of specialized academic instruction sufficient or reasonably calculated to enable Student to receive meaningful educational benefit from District's Reading Mastery program. District's April 2, 2015 IEP denied Student a FAPE.

22. The May 6, 2015 IEP addendum made no changes in the primary structure of the April 2, 2015 IEP. The IEP team's decision to conduct an occupational therapy assessment was a positive step forward, but did not remediate District's oversights in the April 2, 2015 IEP. No new goals were created. Student remained unsupported in identified areas of need. The addition of Book share was a gratuitous attempt to appease Mother, as it was not a well-considered added intervention to complement Student's reading program. District did not increase the time for specialized academic instruction, as required to implement the Reading Mastery program. The May 6, 2015 IEP offered little more than the April 2, 2015 IEP, and did not provide Student a FAPE.

23. The June 10, 2015 IEP addendum added occupational therapy services to the April 2, 2015 IEP. Dr. Yi's emphasis in testing primarily focused on Student's fine motor skills associated with hand writing from the perspective Student's functional hand grip. Less information was provided regarding the equally if-not-more important subject of visual processing, such as Student's difficulties copying information from a white board and completing writing tasks without a visual model. Nevertheless, Dr. Yi determined that Student might have a visual processing disorder. Thirty minutes per week of occupational therapy was added to the IEP addendum half-heartedly. At

hearing, Dr. Yi confirmed that the addition of occupational therapy the IEP was intended as a proactive intervention and District did not believe Student needed the service to access her education.

24. The April 2, 2015 IEP goals were amended to add goals for handwriting, writing conventions, and visual processing. District also finally increased Student's specialized academic instruction time to 60 minutes per day. While the increase to 60 minutes of specialized academic instruction was sufficient to properly implement the Reading Mastery program, it did not meet Dr. Passaro's recommendation of a minimum of 90 minutes to address Student's reading needs. It also did not provide enough time to address the additional goals or occupational therapy, time for which District planned to carve out of the 60 minute total. District's actions confirmed this timeshare when on June 15, 2015, the final April 2, 2015 IEP addendum clarified that all of Student's occupational therapy services would be provided during pull-out time only.

25. In recap, each of the addenda to the April 2, 2015 IEP made small moves forward to correct the defects of the April 2, 2015 IEP. None of them individually, or considered together as a whole, sufficiently modified the April 2, 2015 IEP appropriately to address all of Student's areas of need or provide Student with sufficient specialized academic instruction time. The revised goals and addition of minimal occupational therapy services served more as a means to placate Parents than to provide a suitable IEP designed to address all of Student's areas of need and assist her in accessing her education. For the same reasons expounded in Legal Conclusions 18 through 20 above, Student met her burden of proof that the May 6, 2015, June 10, 2015, and June 15, 2015 addenda to the April 2, 2015 IEP failed to provide Student a FAPE.

STUDENT'S ISSUE 6 AND DISTRICT'S ISSUE 1: DID THE SEPTEMBER 2, 2016 IEP OFFER STUDENT A FAPE?

26. Both Student and District raised the issue of whether the September 2, 2016 IEP provided Student a FAPE. District contends the IEP offered Student a FAPE; Student contends it did not.

27. The September 2, 2016 IEP team contained all statutorily required members. Parents attended the IEP team meeting, accompanied by their attorney. Each of the independent assessors attended the meeting, presented their assessment reports, and participated in the team discussion. Prentice staff, including Ms. Huennekens, also attended and participated. Neither party raised any contentions regarding the composition of the IEP team or Parents' ability to participate in the IEP process.

28. The September 2, 2016 IEP contained all necessary statutory elements. The IEP document included a description of Student's current levels of academic and functional performance which were based upon extensive independent assessments, as well as input from Prentice staff, including Student's teacher, Ms. Huennekens. Based on the information provided from these independent sources, the IEP team determined Student had unique needs in the areas of (1) sight words; (2) reading decoding; (3) reading fluency; (4) reading comprehension; (5) spelling; (6) math calculation; and (7) articulation. The IEP contained 14 goals to support Student's areas of need, and provided a statement of the special education and related services to be provided to Student. The IEP also contained a lengthy list of accommodations recommended by the independent assessors deemed necessary for Student's academic achievement and functional performance. Neither party raised issues regarding the procedural format of the IEP.²³

²³ In closing arguments, both parties addressed the issue of the timeliness or delay in District's convening of the September 2, 2016 IEP team meeting. No procedural

29. With the exception of the occupational therapy assessments, the independent assessors generally made basic findings similar to District. The difference between the assessments was in the more specific information, and corresponding explanations of what the information meant. The independent assessors were able to “connect the dots” to explain the interconnections of Student’s needs, i.e. reading difficulties were connected to visual processing deficits, which were interrelated with motor skill deficits, which were related to vision deficits. District largely adopted the information presented by the assessors, and created goals which corresponded to the recommendations. In addition to Student’s articulation difficulties, Dr. Rozenberg found weakness in Student’s ability to formulate narratives. District created a corresponding goal. Mr. Furbush presented a far more detailed occupational therapy assessment than Dr. Yi. In support of Mr. Furbush’s findings, District created three goals which supported Student’s organizational skills and behavior, in addition to her handwriting and visual motor processing. The academic goals were not truly in dispute. Dr. Haytasingh found the goals to be appropriate. Dr. Passaro did not comment on the goals presented, however he wrote Parents that the September 2, 2016 IEP was what the April 2, 2015 IEP should have looked like; this statement appears to validate the goals. Further, each of the goals could have been implemented at Moffett or Prentice.

30. Student’s contention that District failed to provide sufficient services to support the goals is unfounded. District did not provide the requisite hours of services recommended by Ms. Rozenberg or Mr. Furbush. District was not required to adopt

issues were raised at the Prehearing Conference pertaining to statutory timelines, as evidenced by the Order Following Prehearing Conference. Further, the timeline was not addressed at hearing, except for chronological purposes; therefore, the ALJ makes no findings or rulings on this issue.

their recommendations. District showed that the increase in Student's speech and language services comported with the additional goals. Ms. Graves indicated she could appropriately implement the speech and language goals. Ms. Rozenberg did not testify to indicate otherwise. District accepted Mr. Furbush's findings regarding how Student's working memory impacted her ability to stay on task, and her need for organizational skills. Student's occupational therapy goals supported these findings. Appropriate goals were created which could be addressed in 30 minutes. Further, Student's visual motor skills were also being addressed in the visual therapy provided by Dr. Ryan. Again, all of the requisite services could be implemented at Moffett or Prentice.

31. The focus must be on the placement offered by the school district, not the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*) An educational agency need not prepare an IEP that offers a potential maximizing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 197, fn. 21.) Instead, "[T]he assistance that the IDEA mandates is limited in scope. The Act does not require that States do whatever is necessary to ensure that all students achieve a particular standardized level of ability and knowledge. Rather, it much more modestly calls for the creation of individualized programs reasonably calculated to enable the student to make some progress towards the goals in that program." (*Thompson R2-J School v. Luke P.* (10th Cir. 2008) 540 F.3d 1143, 1155.)

32. The primary disagreement between the parties revolved around Student's desire to remain at Prentice. As reported by Dr. Endelman, Prentice primarily served children with language-based learning disabilities, and utilized Slingerland methodology. For purposes of a unilateral placement for Student, Prentice represented an appropriate placement. In fact, as a certified non-public school, Prentice was often

utilized by school districts for children requiring alternate placements from those offered in public school.

33. Dr. Passaro, Dr. Endelman, and Dr. Haytasingh each provided competent professional opinions. Dr. Passaro's recommendations and concerns bear slightly more weight as he not only assessed Student, but he also observed the classroom settings at both Moffett and Prentice. He also interviewed Student's teacher at Prentice. Dr. Haytasingh, on the other hand, only reviewed Student's assessments and IEP documents. There was no disagreement that Slingerland methodology is effective. Conversely, no one expressed an opinion that Student could not learn using other scientifically based methodology. Dr. Passaro determined that Student required a highly structured learning environment with opportunities for one-to-one or small group instruction. Prentice provided a smaller student to teacher ratio than Moffett's general education class. The Learning Center at Moffett, however, provided specialized academic instruction in small groups of five students as well. Prentice provided an hour or more of small group instruction per day. Student's IEP provided 90 minutes of specialized academic instruction. The final factor in determining the appropriate placement for Student rests with a determination of least restrictive environment.

34. Student's assertion that she was making progress at Prentice is largely immaterial as it does not define the criteria for placement. When compared, Prentice and Moffett offered similar educational programs. Prentice and Slingerland methodology were simply preferred by Student. A school district has the right to select the program for a special education student, as long as the program is able to meet the student's needs. The final factor in determining the appropriate placement for Student rested with a determination of least restrictive environment.

35. In addition to providing a FAPE, a school district must ensure that "[t]o the maximum extent appropriate, children with disabilities . . . are educated with children

who are not disabled.” (20 U.S.C. § 1412(5)(A); see also 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) This “least restrictive environment provision reflects the preference by Congress that an educational agency educate a child with a disability in a regular classroom with his or her typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (*Rachel H.*).

36. Special education classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Ed. Code, § 56040.1, subd.(b).)

37. 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 fulltime 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. (*Rachel H., supra*, 14 F.3d at p. 1404.)

38. District’s placement offer meets all of the *Rachel H.* criteria. Student was of average to above average intelligence. Dr. Haytasingh opined Student would be best educated in the general education classroom with specialized academic instruction where she would benefit from incidental learning derived from students teaching students. Ms. Kent continued to believe Student could be appropriately educated in the general education classroom. Student did not have behaviors which would negatively impact the teacher or other students in the class. The cost of placing Student in the regular classroom was not a consideration. Student’s specific learning disabilities were

significant, but did not require placement in the more restrictive environment provided at Prentice.

39. Lastly, Dr. Passaro and Parents expressed concern about Student's return to Moffett. The September 2, 2016 IEP did not contain a plan for Student's transition back to Moffett nor did it contain a behavior plan or counseling to address the potential return of Student's anxieties. A transition plan did not equate to an area of need. A return to Moffett did not require a reacquaintance period. Student had been absent from Moffett only one year. Moffett was Student's home school, her brother attended Moffett, she had friends at Moffett, and she was familiar with the school environment at Moffett.

40. Dr. Passaro was also concerned about Student's anxieties and behaviors reemerging upon return to Moffett. This concern was based upon Student's prior anxiety and meltdowns in the first grade. The IEP contained no behavior plan or counseling to address this contingency. Student's present levels of performance as determined by Ms. Huennekens did not indicate any school-related anxieties. In September 2016, Student's emotional status was not an area of concern, and Student's regression remained speculative. That is not to say that the concerns were unfounded or that Student's emotional status should not have been monitored once she returned to Moffett. A behavior plan as part of the September 2, 2016 IEP, however, would be premature. There were no current baselines for determining what behaviors might need to be addressed, and no ability to pinpoint what might or might not cause stress. Once Student returned to Moffett, District could better determine if Student required any behavior supports.

41. In summary, District established that it properly developed the September 2, 2016 IEP and that this IEP offered Student an appropriate educational program. Conversely, Student failed to sustain her burden of proof to establish any substantive

violation of the IDEA. District developed Student's September 2, 2016 IEP for the 2016-2017 school year, based upon valid independent assessments, and information obtained from Prentice, to determine Student's present levels of performance in all areas relating to her education. The IEP goals comported with these needs, and the IEP was reasonably calculated to enable Student to receive educational benefit. District's offer of placement at Moffett represented the least restrictive environment in which to educate Student, and all of Student's goals and services could be easily implemented in that setting. The September 2, 2016 IEP offered Student a FAPE in the least restrictive environment.

REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Puyallup, supra*, 31 F.3d at p. 1497.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid, supra*, 401, F.3d at p. 524.)

2. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate.

(20 U.S.C. § 1412(a)(10)C(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Burlington v. Department of Ed.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed.2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the districts proposed placement does not provide a FAPE).) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [114 S. Ct. 36, 1126 L. Ed. 284] (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress).)

3. Student prevailed on Student's Issues One through Five. Specifically, District failed in its child find obligations between September 3, 2014 and January 29, 2015. Further, District's April 2, 2015 IEP and its addenda IEPs dated May 6, June 10, and June 15, 2015, denied Student a FAPE.

4. District failed in its child find duties for the period of September 3, 2014, through the date of District's issuance of an assessment plan on January 29, 2015. During this period, Parents obtained private reading tutor services for Student. It is equitable to award reimbursement of Student's reading tutoring expenses in the amount of 225.00.

5. District's April 2, 2015 IEP was insufficient and denied Student a FAPE. While Student remained at Moffett for the remainder of the 2014-2015 school year, Parents incurred expenses for Student's supplemental reading intervention from Stowell Learning Center. It is equitable to award reimbursement in the amount of 9,766.03.

6. District's April 2, 2015 IEP and its addenda dated May 6, June 10, and June 15, 2015, failed to offer Student a FAPE. Parents notified District of their intent to unilaterally place Student at Prentice School and seek reimbursement from District. Prentice constituted an appropriate educational placement for Student, which provided educational benefit. Student attended Prentice for the 2015-2016 school year and it is equitable to award reimbursement of Student's tuition for the 2015-2016 school year in the amount of 19,726.93, plus reimbursement of educationally related transportation costs in the amount of 2,527.20, calculated at the rate of 26 miles per day at the then Internal Revenue Service rate of 0.56 per mile, for a period of 180 days.

7. Student was eligible for special education and related services under the category of speech and language impairment and District had provided Student with speech and language services while at Moffett. Therefore, it is equitable to award reimbursement for speech and language services received while attending Prentice, in the amount of 310.00. Student also obtained vision therapy services from Dr. Ryan. As Student's visual processing was an area of need not addressed in the April 2, 2015 IEP, it is equitable to award reimbursement of Dr. Ryan's services in the amount of 200.00.

8. Student is not entitled to reimbursement for uniforms, as everyday clothing for Student. Further, Student's request for reimbursement of expenses incurred for Learn 2 Read, in lieu of extended school year, is denied. Extended school year was not argued as an issue. The evidence did not support a finding that it was likely Student's reading skills would regress without extended school year services.

9. District's September 2, 2016 IEP was appropriate, and offered Student a FAPE for the 2016-2017 school year. District may implement the September 2, 2016 IEP without parental consent, in the event Student desires special education and related services from District. Further, as Student did not prevail on this issue, Student is not entitled to any reimbursement or prospective placement for the 2016-2017 school year.

ORDER

1. Within 60 days of this Decision, District shall pay directly to Student's parents the sum of 32,755.16, representing the combined total amount of reimbursement owing to Parents determined as follows:

- a. 225.00, as reimbursement for private reading tutor services obtained for Student;
- b. 9,766.03, as reimbursement for expenses incurred providing Student supplemental reading intervention from Stowell Learning Center;
- c. 19,726.93 as reimbursement of Student's tuition at Prentice School for the 2015-2016 school year;
- d. 2,527.20, as reimbursement of educationally related transportation expenses for the 2015-2016 school year;
- e. 310.00, as reimbursement for speech and language services received while attending Prentice during the 2015-2016 school year; and
- f. 200.00, as reimbursement for vision therapy obtained for Student while attending Prentice during the 2015-2016 school year.

2. All other relief requested by Student is denied.

3. District's request for a finding that the September 2, 2016 IEP was appropriate is granted. District may implement the September 2, 2016 IEP without parental consent if Student re-enrolls to attend a District school. District is not obligated to fund Student's private placement for the 2016-2017 school year, and Parents not obligated to enroll Student in a District school if Parents wish to privately place Student at their expense.

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. In this matter, Student prevailed on Student's Issues 1, 2, 3, 4, and 5. District prevailed on Student's Issue 6 and District's Issue 1.

RIGHT TO APPEAL DECISION

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

DATE: February 13, 2017

_____/s/_____
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings