

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:  
PARENT ON BEHALF OF STUDENT,

v.

YUCAIPA-CALIMESA JOINT UNIFIED  
SCHOOL DISTRICT, AND SAN  
BERNARDINO COUNTY SUPERINTENDENT  
OF SCHOOLS.

OAH CASE NO. 2013100045

DECISION

Parent, on behalf of Student, filed the due process hearing request (complaint) on September 30, 2013, naming Yucaipa-Calimesa Joint Unified School District. The complaint was amended on January 23, 2014, to name both Yucaipa-Calimesa and the San Bernardino County Superintendent of Schools (referred to together as District) as parties.

Administrative Law Judge Sabrina Kong heard this matter in Yucaipa, California, on April 23, 24, 28, 29, 30, May 5, and 6, 2014.

David Sugden, Elizabeth Eubanks and Maronel Barajas, attorneys at law, represented Student. Mother attended the hearing on all days.

Vivian Billups, attorney at law, represented the District. Patty Metheny, Yucaipa-Calimesa's Director of Student Services; Laura Chism, East Valley Special Education Local Plan Area Program Manager; and David Berry, the Superintendent's representative and coordinating principal for the East Valley SELPA, attended the hearing on all days.

A continuance was granted for the parties to file written closing arguments and the record remained open until May 23, 2014. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

## ISSUES<sup>1</sup>

1. Did District deny Student a free appropriate public education from September 30, 2011 through the 2012 extended school year by:
  - a. Failing to consider Parents' concerns at the February 29, 2012 IEP team meeting?
  - b. Failing to assess in the areas of assistive technology, functional vision, Braille instruction needs, and before referring Student to the California School for the Blind?
  - c. Failing to include measurable orientation and mobility goals in Student's IEP's?

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<sup>1</sup> The issues pled in Student's complaint have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) Student's allegations regarding District's violations of Section 504 of the Rehabilitation Act and Americans with Disabilities Act were dismissed because the OAH has no jurisdiction over those claims. The two year statute of limitations began to run on September 30, 2011, as to District, and on January 23, 2012, as to Superintendent. Despite Student's inclusion of the September 27, 2011 IEP team meeting as an issue at hearing, it is outside the statute of limitations period and is not considered in this decision.

- d. Failing to provide appropriate placement, behavior support, assistive technology, Braille instruction for mastering reading and math standards, Braille instructional aide, and orientation and mobility services?
  - e. Failing to provide proper written notice following the December 6, 2011, February 7, 2012, and February 29, 2012 IEP team meetings?
  - f. Denying Parents the right to participate in the February 7, 2012 IEP team meeting by failing to give notice of the meeting?
2. Did District deny Student a FAPE for the 2012-2013 school year, the 2013 extended school year, and the 2013-2014 school year by:
- a. Failing to consider Parents' concerns at the January 22, 2013, April 18, 2013 and May 28, 2013 IEP team meetings?
  - b. Failing to assess in the areas of assistive technology, functional vision, Braille instruction needs, and before referring Student to the California School for the Blind?
  - c. Failing to include measurable orientation and mobility goals in Student's IEP's?
  - d. Failing to provide appropriate placement, behavior support, assistive technology, Braille instruction for mastering reading and math standards, Braille instructional aide, and orientation and mobility services?
  - e. Failing to provide proper written notice following the May 28, 2013 IEP team meeting?

## SUMMARY OF DECISION

Student demonstrated that District failed to provide adequate Braille instruction by a qualified Braille instructional aide throughout the statutory period. District inappropriately determined that Student was incapable of benefitting from more Braille instruction because his primary special education eligibility categorization was

intellectual disability, and arbitrarily decreased the amount of Braille instruction recommended to Student by the California School for the Blind. Student also demonstrated that District failed to provide adequate orientation and mobility services from the beginning of the 2012-2013 school year through October 31, 2012, because District used untrained paraprofessionals to assist Student through the campus, which confused Student and caused him to regress in his orientation and mobility skills. Student further demonstrated that District's withholding of Braille instruction and orientation and mobility services during the 2012 and 2013 extended school years was denial of FAPE because Student needed Braille instruction to obtain literacy, and needed orientation and mobility services to learn proper techniques to travel safely.

Although Student demonstrated that District failed to provide appropriate orientation and mobility goals in the 2011-2012 and 2012-2013 school years, Student did not demonstrate that the orientation and mobility instruction Student received during those school years were inappropriate, or that he did not benefit from the orientation and mobility services he received during this period. Student did not demonstrate that District provided inappropriate orientation and mobility goals in the 2013-2014 school year because those goals were measurable and based on a recent assessments of Student's needs in this area. District also properly assessed Student in assistive technology by sampling various devices with Student, and provided him with appropriate assistive technology based on his abilities throughout the statutory period. However, District did not conduct a formal functional vision assessment to determine how Student accessed information, but did not need to do so because it had long been determined that Student was a Braille reader. District also did not need to reassess Student before referring him to the California School for the Blind because they had assessed him within three years from his last assessment. The behavior supports District provided to Student were appropriate, and no further supports were required because

Student did not have any serious behavior problems, or any behaviors impeding his, or anyone's, access to education. Parents were provided meaningful participation at all IEP team meetings because they had opportunities to ask questions, share their opinions, and express their disagreements with the IEP team. Lastly, Student failed to demonstrate that District was required to provide any written notice following IEP team meetings.

## FACTUAL FINDINGS

1. Student is a sixteen-year-old-boy who was found eligible for special education by District under the primary category of multiple disabilities, including intellectual disability and autistic spectrum disorder, and under the secondary category of visual impairment. Student was properly enrolled within District, and District was the local educational agency at all relevant times. He attended Park View Middle School during the 2011-2012 regular and extended school year. He attended Yucaipa High School during the 2012-2013 school year, the 2013 extended school year, and the 2013-2014 school year through January 23, 2014.

2. Student was blind from birth. He was evaluated by the California School for the Blind in 2007, which concluded that it was inappropriate for Student to be taught his letters using only form or plastic cut-outs. The California School for the Blind's 2007 report, which District had access to since 2007, stated "[B]eginning braille readers need a high level of consistency and long duration of instruction to achieve a level of competency in Braille reading and writing...It cannot be known how proficient a braille reader [Student] may become, but he must be given the full chance to learn and should have strong exposure. For [Student], this means a minimum of 1 hour a day, 4-5 days a week for about three years." Student started learning Braille in 2007.

3. By the time of the hearing, Student was capable of loading and unloading the dishwasher, doing his own laundry, including folding and matching socks, collecting eggs from the chicken coup, riding his bike in the yard, avoiding the dangerous part of

the tool when woodworking, and playing the bagpipes. By the time of the hearing, Student spent one hour everyday practicing the bagpipes, which he started playing in 2008, and could play Amazing Grace and Irish Lullaby. He was also capable of learning the notes and putting the notes together because of his great memorization skills. His bagpipe lessons were 30 minutes when he first started playing, but increased to one hour after the first year, and in 2013 his lessons were one hour, once a week.

#### 2011-2012 SCHOOL YEAR AND EXTENDED SCHOOL YEAR

4. Nadine Hoyt was Student's special education teacher, and his case carrier, during the regular 2011-2012 school year. She held a bachelor's degree in psychology, and an autism specialist credential. Ms. Hoyt selected materials for Student from a textbook, and gave them to Teresa Gibbons, Student's visual impairment instructor, to be brailled before the lesson. Ms. Gibbons promptly returned them to Ms. Hoyt. Student progressed with his visual impairment and orientation and mobility skills in Ms. Hoyt's class. Student needed prompts and redirection, and one-to-one aide support. He had no behavioral challenges which impacted his education.

5. Nancy Hearon was Student's primary one-to-one aide, with substitute one-to-one aides assisting Student during times when Ms. Hearon was not available. Susanne Ferguson, District's inclusion specialist and board certified behavior analyst, provided positive reinforcements strategies to Ms. Hoyt's class. No behavior support plan was recommended for Student because he did not exhibit behaviors which impeded his or anyone else's learning.

6. Mother requested a referral for assessment to the California School for the Blind in October of 2011, which District started. A referral to California School for the Blind required submission of a complete package of information provided from District and parents. It usually took six months for the California School for the Blind to respond to a referral. Father revoked consent for the referral in mid-October of 2011, when

District personnel called parents to inform them that the parental information necessary for referral was missing.

#### December 6, 2011 IEP Team Meeting

7. Student's annual IEP team meeting was held on December 6, 2011. The team discussed Student's present levels of performance. Student had pre-emerging Braille skills, could decode a first grade passage, and was successful at a first grade level. Student could add multiple digits with regrouping and benefitted from using a calculator when the sum exceeded 100. He could subtract single digits, but had difficulty with subtracting double digits with borrowing. He could multiply single digits, but made calculation mistakes when counting beads on his counting tool. Student's math was brailled in English format, not Nemeth code format, which is the Braille version of math in numbers format. Student was capable of writing by brailing when given a writing prompt, but did not write independently. Student partially met his reading, math, and writing goals, and met his Braille reading and writing goal from the previous year. The IEP team discussed classroom consequences and positive reinforcements when Student inappropriately touched Ms. Hoyt's phone or desk. Mother requested a general assessment from the California School for the Blind. District offered specialized academic instruction of 300 minutes daily in a self-contained, separate class, orientation and mobility collaboration services of 30 minutes weekly, vision impairment itinerant services<sup>2</sup> of 150 minutes weekly, and a one-to-one aide's services for 360 minutes daily to assist Student with his academics. Program options were discussed and the team agreed that the placement offered was the appropriate and least restrictive environment for Student.

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<sup>2</sup> The parties used the terms visual impairment services and Braille instruction interchangeably. This decision will use "Braille instruction" for clarity.

8. The IEP included an orientation and mobility goal: "By 12/6/2012, [Student] will go directly to specific areas inside his classroom area when requested 2/3 trials with 90% accuracy. Also, [Student] will continue[] to work on his route to and from his classroom to his speech class with 90% accuracy 2/3 trials." The baseline was that Student took too long to get to classroom areas with which he was already familiar. The objectives were that by April 6, 2012, when asked, Student would go directly to the requested classroom areas with 90 percent accuracy, two out of three trials, and that by August 6, 2012, Student would be able to travel to and from his classroom to speech class with 90 percent accuracy, two out or three trials. The goal was to be measured by teachers' notes and observations. Because Mother did not sign the December 6, 2011 IEP until March 2012, District was implementing the December 10, 2010 IEP until March 2012.

9. In January 2012, Student met his Braille goal of learning 25 new contracted and un-contracted Braille words with 90 percent accuracy from his December 2010 IEP. In January 2012, Student partially met the goal of being able to type the home row keys and the bottom row using the screen reader software on the classroom computer with 75 percent accuracy from his December 2010 IEP.

10. An IEP team meeting was scheduled for February 7, 2012, to review and revise Student's goals. District did not provide proper written notice to parents regarding the scheduled February 7, 2012 IEP team meeting. District held the February 7, 2012 IEP team meeting without parents, and discussed orientation and mobility goals, including the addition of a new orientation and mobility goal.

11. The IEP team met again on February 29, 2012, this time with Mother in attendance. The team reviewed with Mother the changes proposed at the February 7, 2012 meeting. Mother requested and District provided extended school year. Mother also requested an assistive technology assessment. District addressed Mother's concerns



about math instruction. District assured her that Student had never gone without math instruction, and that the school's current math curriculum, Equals, focused on Algebra and Geometry. District did not agree to Mother's proposal that any one-on-one aide working with Student must have three years of experience and Braille training. Mother also expressed concerns about Student's anxieties, exhibited by eye-poking, hand flapping, and other inappropriate behaviors, which she attributed to boredom. Ms. Hoyt and Catherine Pearson, the assistant principal, developed a Fast Fact form, which charted Student's inappropriate behaviors with specific prompt and re-direction scripts for all one-to-one aides working with Student.

12. At the February 29, 2012 meeting, the December 6, 2011 IEP was amended to add two new goals, one orientation and mobility goal, and one math goal. Student's orientation and mobility instructor, Chjene Chhor, reported that Student met his goal of being able to go to a specific area in his classroom, and partially met his goal for being able to go to his speech class with 90 percent accuracy two out of three trials. The new orientation and mobility goal was "By 12/6/12 [Student] be orientated and learn routes to various classroom areas with prompts and assistance[] with 70 percent accuracy two out of four trials." The baseline was for Student to be orientated to his classroom. The objective, by April 6, 2012, was to be orientated and learn routes to various classroom areas with prompts and assistance with 60 percent accuracy, two out of four trials, and by August 6, 2012, to do so with 70 percent accuracy, two out of four trials.

13. Mother consented to changes in the February 29, 2012 IEP on the same date.

14. Parental consent for a referral to the California School for the Blind was reestablished around March 2012, and District submitted the referral in April 2012. At hearing, Mother disputed that Father ever revoked the referral consent. However,

Mother's request for such a referral at the December 2011 IEP meeting was consistent with Mother understanding that Father had revoked consent for the earlier consent for a referral. Regardless of the existence/timing of the consent revocation, Student did not establish he provided the parental information necessary for submission to the California School for the Blind before March 2012, when District had the information needed to submit the referral.

15. In May 2012, Student made progress toward his math goal of determining the approach and operation needed to successfully complete the problem with 85 percent accuracy, four out of five trials as set in his December 6, 2011 IEP. Further, in May 2012, Student was making progress toward his Braille writing goal of demonstrating knowledge of correct punctuation and capitalization with 90 accuracy as set in his December 6, 2011 IEP. In May 2012, Student was making progress toward his Braille reading and writing goal that he would correctly read and write the lower cell part word sign "en," "in," "be" "con" "dis" and "con" in four out of five reading and writing passages with 90 percent accuracy as set in his December 6, 2011 IEP.

16. During the 2011-2012 school year, Ms. Gibbons and Ms. Gomez each spent 50 percent of the 150 minutes weekly with Student.

17. During the 2011-2012 school year, Student had access to the following assistive technology: a personal computer with the Write Out Loud software, a talking calculator, three Perkins brailers for school use and another one for home use, Pictures in a Flash, a thermal form machine which provided raised images of maps, charts and pictures, a Cranmer abacus, a counting device, a Braille clock, and a tape recorder.

#### 2012 Extended School Year

18. Student did not receive any orientation and mobility services, or any Braille instruction during the 2012 extended school year. The 2012 extended school year was Mondays through Thursdays, for 20 days.

19. Jana Watson was Student's teacher for the 2012 extended school year, and Student's teacher for 2012-2013, and 2013-2014 school years. She was a certified education specialist for moderate/severe classes, and had 40 hours of training each in applied behavior analysis and autism. She was not a certified vision impairment teacher, or a certified orientation mobility teacher. Her moderate/severe certification allowed her to have visually impaired students in her class, but she was not qualified to provide specialized instruction for vision impairment or orientation and mobility. On Mondays, she worked with Student on his IEP goals for the first two hours, took a snack break, engaged Student in a social/ recreational activity such as playing a game, or listening to music for approximately 45 minutes. On Tuesdays, she worked with Student on menu planning. Wednesdays were spent grocery shopping. Thursdays were spent cooking a meal. She observed Student engaging in verbal stimulations, off- task behaviors and sensory seeking behaviors such as rubbing his chin on the wall, the desk, and the cabinets, and using his cane to put pressure on his chin. However, Student did not engage in any disruptive behaviors. At hearing, Ms. Watson agreed that she had no basis to opine on whether Student's Braille skills improved, regressed, or stayed the same during this period.

20. Ms. Hearon was with Student during the 2012 extended school year, and worked with Student on his braille and helped get Student safely to the grocery store, but was not certified to teach Braille or orientation and mobility skills and did not do so during this period. Ms. Watson reviewed the February 29, 2012 IEP and spoke with Ms. Gibbons regarding Student's skills before summer school.

#### 2012-2013 SCHOOL YEAR, EXTENDED SCHOOL YEAR 2013, AND 2013-2014 SCHOOL YEAR

21. Nicholas Casias became Student's orientation and mobility instructor starting August 2012, and remained so in the 2013-2014 school year. Mr. Casias held a

master's degree in special education, specializing in orientation and mobility, and was credentialed by the Academy for Certification of Vision Rehabilitation and Education Professionals in orientation and mobility, California's Clinical Rehabilitation Services in orientation and mobility, and California's Preliminary Designated Subjects Adult Education and Teaching Credential in English as a second language, elementary and secondary basic skills, English, social sciences, and self-maintenance skills for adults with disabilities. He had been working with Superintendent providing assessment and instruction in orientation and mobility skills to children with visual impairments and multiple disabilities since August 2012. Of the individuals working with Student at school, Mr. Casias and Ms. Chhor were the only two individuals who were certified in providing orientation and mobility services by the Academy for Certification of Vision Rehabilitation and Education Professionals and California's Clinical Rehabilitation Services.

22. On October 25, 2012, District received notice from the California School for the Blind, indicating they would observe Student at school and at home during the week of January 14, 2013. Since Parents preferred to have Student assessed at the California School for the Blind, arrangements were made to assess Student there the week of March 4, 2013.

23. During the 2012-2013 school year, Ms. Gibbons and Ms. Gomez each spent 50 percent of the 150 minutes weekly with Student.

24. During the 2012-2013 school year, Student had access to the following assistive technology: a personal computer with the Write Out Loud software, a talking calculator, three Perkins brailers for school use and another one for home use, Pictures in a Flash, a thermal form machine which provided raised images of maps, charts and pictures, a Cranmer abacus, a counting device, a Braille clock, and a tape recorder. For the 2013-2014 school year, Student had the same assistive technology available to him

in the prior two school years, and a Mountbatten braille and printer, a Victor Reader Stream, and Jobs Access With Speech screen reader software. Although Student had access to a talking calculator and Cranmer abacus for eight years, Ms. Gibbons reported that Student was more successful with the counting tool.

#### September 18, 2012 IEP Team Meeting

25. The IEP team met on September 18, 2012, to address Parents' concerns regarding Student's services at Yucaipa High School. Dr. David Berry, Superintendent's representative and coordinating principal for the East Valley SELPA, reported on the orientation and mobility services provided by Mr. Casias. The orientation and mobility goal was to teach Student the route on campus, and to prepare Student with pre-requisite skills for additional environments, including off-campus experiences which Mother expressed was important. Mother asked for an iPad for Student. The IEP team discussed the need for an assistive technology assessment. Ms. Gibbons and Dr. Berry explained that part of the vision impairment services included trying out a variety of assistive technologies and software programs. Ms. Gibbons proposed trying out different assistive technologies with Student while she worked with him, and based on information obtained, a formal assistive technology assessment referral could be made at the December 2012 annual IEP team meeting. No changes were made to any of Student's IEP services at this IEP team meeting.

26. In an October 11, 2012 e-mail, Mr. Casias advised Dr. Berry and Ms. Gibbons that he had observed three different paraprofessionals, untrained as sighted guides and unaware of the orientation and mobility routes taught to Student, accompanying Student around campus in Ms. Hearon's absence. Mr. Casias explained to them that having Student travel around the campus in unfamiliar routes, with untrained paraprofessionals, placing Student in areas which Student had not been trained to travel, such as the cafeteria, caused Student to regress in his orientation and mobility

skills. In the same e-mail, he offered to train all paraprofessionals working with Student so they could use the same routes and orientation markers that had been created for Student, and stated that any paraprofessional working with Student should shadow Mr. Casias, Ms. Hearon and Christy Rettig, another paraprofessional working with Student. Shortly thereafter, Mr. Casias conducted two orientation and mobility trainings, on October 31, 2012 and on January 23, 2013, for paraprofessionals working with Student. After receiving his orientation and mobility training, every paraprofessional working with Student properly implemented the techniques taught to assist Student around the campus. At hearing, Mr. Casias stated that even before the training, the aides working with Student got him around campus safely without incident.

#### January 22, 2013 IEP Team Meeting

27. Student's annual IEP team meeting was due in December 2012, but the parties agreed to continue it to January 22, 2013.

28. At the January 22, 2013 IEP team meeting, the IEP team discussed Student's progress on his December 6, 2011 IEP goals. Ms. Gibbons reported that as of December 2011, Student had learned 45 Braille contractions<sup>3</sup> and as of January 2013, Student had learned a total of 83 Braille contractions. Ms. Gibbons informed the IEP team that Student had not been taught Nemeth code because it would confuse Student as he had not mastered the Braille contractions. Therefore, Student's math was brailled for him in English format, not in symbols or numbers under the Nemeth code. Student was unable to perform multiplication, although his 2011 baseline levels indicated that he could at that time. Student mastered double digit addition and subtraction, but

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<sup>3</sup> There are a total of 189 Braille contractions, which if punctuations, letters and word numbers, and their associated rules were included yields a total of 256 Braille contraction combinations.

demonstrated reversals with his numbers, and performed better when the math problem were read to him. Parentheses were difficult for Student to comprehend. In January 2013, Student achieved his math goal of determining the approach and operation needed to successfully complete the problem with 85 percent accuracy, four out of five trials as set in his December 6, 2011 IEP. Despite learning 38 additional Braille contractions since December 2011, Student continued to work at a first grade level in reading. Further, despite a May 2012 finding that Student was making progress toward his Braille reading and writing goal that he would correctly read and write the lower cell part word sign "en," "in," "be" "con" "dis" and "con" in four out of five reading and writing passages with 90 percent accuracy as set in his December 6, 2011 IEP, in January 2013, it was reported that Student was not making progress toward this goal. This goal was then replaced with a more appropriate goal because Student had difficulty with the use of the "dis" contraction. Student had adult assistance at all times because he required adult redirection and prompting to attend, complete work, and travel around campus because he was not an independent traveler. Student's inappropriate behaviors included tapping, repetitive opening and shutting of doors, and inappropriate touching of items on campus such as licking trees, classroom tables and his brailers. Mother requested, and District agreed to conduct, a functional behavior analysis.

29. Mr. Casias reported that Student did not meet his orientation and mobility goal of going to specific areas in the classroom, and to and from speech class because Student was not an independent traveler. Mr. Casias trained Student's one-to-one aide on how to prompt Student to use a sighted guide, providing her with techniques for moving Student safely through his environment. Mr. Casias reported that Student's low conceptual understanding and intellectual development was prohibiting growth in the orientation and mobility area. He also shared that the goal of having Student orientated and learn routes to various classroom areas with prompts and assistance was too broad,

Student was unable to meet the goal, and the baseline statement that Student “continued to be orientated to his campus environment,” was inaccurate.

30. However, at hearing, Mr. Casias explained that the same orientation and mobility goals developed by Ms. Chhor appearing in the February 7, 2012, February 29, 2012 and September 18, 2012 IEP’s were measurable and appropriate. Mr. Casias based this aspect of his hearing testimony on a review of Student’s file which contained teachers’ notes, IEP’s, and assessments, and a conversation with Ms. Rettig. Although there were no specific, quantifiable data in Student’s file on the percentage of accuracy which Student attained, Mr. Casias concluded at hearing that Student partially met the goal of going directly to specific areas inside his classroom area when requested with 90 percent accuracy, and continued to work on his route to and from his classroom to his speech class with 90 percent accuracy two out of three trials in January 2012, and made progress toward the same goal in June 2012. He also concluded at hearing that both the “partially met goal” and “making progress toward goal” designations in Student’s file meant Student was able to achieve the goal with 89 percent or less accuracy. Mr. Casias concluded at hearing that by January 2013 and May 2013, Student made minimal progress on the same goal based on his observations and anecdotal notes. Likewise, with respect to the goal that Student be orientated and learn routes to various classroom areas with prompts and assistance with 70 percent accuracy two out of four trials, Mr. Casias concluded at hearing that in June 2012, Student was making progress, and by January 2013 and May 2013, Student made minimal progress on the same goal based on his observations and anecdotal notes.

31. Mr. Casias’ testimony at hearing contradicted what Mr. Casias stated at the 2013 IEP’s that those same goals were overly broad with inaccurate baselines. Mr. Casias explained at hearing that he was overly critical of the goals at the 2013 IEP team meetings because he was motivated by the desire to draft new goals for Student. His



testimony at hearing that Student was making progress up to June 2012 was not as persuasive because they contradicted his opinion expressed at the 2013 IEP, and because they were based on notes he read which appeared in Student's file that were not prepared by him, and not based on his personal observation. Likewise, at hearing, Mr. Casias, explained that his October 11, 2012 e-mail stating that Student "regressed" was nothing more than a poor choice of words without factoring in Student's intellectual disability and transition to the high school campus, and merely relating what Ms. Hearon described to him. Mr. Casias' explanations regarding these issues at hearing were much less persuasive than the statements he expressed closer to the time he observed Student for the purposes of developing the proper services and supports. His statements in both the October 11, 2012 e-mail and 2013 IEP's appeared to have resulted from his observations of Student after training at least Ms. Hearon and Ms. Rettig to work with Student on the orientation and mobility routes for Student, with full appreciation for Student's abilities including his intellectual disability and autism.

32. Ms. Gibbons tried to implement Jobs Access With Speech and Write Out Loud with Student. Both were screen reader programs which spoke everything typed onto the computer screen. Ms. Gibbons reported that Student used it weekly with assistance and prompting. Because Student had an iPad at home, Ms. Gibbons also used an iPad with Student by switching on the voice mechanism feature. Mother requested, and District agreed to conduct, an assistive technology assessment.

33. The IEP team agreed to reconvene after completion of all assessments, including the assessments by the California School for the Blind.

#### April 18, 2013 IEP Team Meeting

34. The IEP team met again on April 18, 2013. The meeting was convened as a triennial, and a continuation of the January 2013 annual IEP team meeting. The team reviewed the California School for the Blind.

35. The California School for the Blind assessed Student using the Wechsler Intelligence Scale for Children IV, the Blind Learning Aptitude Test, the Southern California Ordinal Scales of Development, and the Scales of Independent Behavior Revised (short form for the visually impaired), which all consistently found that Student was intellectually impaired with autistic tendencies. The Wechsler found Student's verbal comprehension and working memory scores were both under the point one percentile range. The Blind Learning Aptitude Test was used to evaluate Student's nonverbal, spatial and tactile skills and used to predict Student's Braille potential, found Student performed at the six-year level which was the lowest level on the test. The Ordinal Scales of Development found Student's sensory motor reactions to be in the 18 to 24 month range and pre-conceptual thought in the two to four-year level, demonstrating the most success in sorting objects into two categories according to one variable, skills with object permanence, basic symbolic language and perceptual relationships, challenges with concepts, imagination, and working with over two variables. The Scales of Independent Behavior was based on responses from a parent questionnaire evaluating Student's functional independence, including motor skills, social interaction and communication skills, and personal and community living skills. Student scored very low, or the age equivalent of a seven years and nine months old.

36. The California School for the Blind reported that Student had good Braille decoding and spelling skills, and that Braille was an excellent tool and vehicle for expanding his communication. Student was capable of reading words at a second grade level, but incapable of evaluating, inferring and summarizing. His reading and listening comprehension levels were considered "pre-primer," or the equivalent to "pre-school to kindergarten." He demonstrated a good foundation in the writing mechanics of spelling, punctuation and format. With the Perkins braille, Student independently inserted paper and scored in the fifth grade level, mostly in un-contracted Braille. Un-contracted Braille

is an alphabet which directly correlates to each letter in print, and takes up a lot of space. A basic elementary school, one volume, math book in print takes up 30 or 40 volumes in un-contracted Braille. It is important to learn contracted Braille because all books, public signs and menus are presented in contracted Braille. Further, contractions make Braille more manageable, because one or two contractions stand for an entire word or a group of letters, and make reading faster by allowing entire words or phrases to be read together, instead of letter by letter. Nemeth was the Braille code for math and science, and all math materials were presented in Nemeth. Student had good coin identification skills, but had many gaps in number concepts. He was unable to solve basic addition or subtraction problems correctly without his counting device. He was able to read the math problems correctly, set up vertical multiplication problems with the Braille writer and copy them accurately, but solved them incorrectly. The California School for the Blind recommended that Student build his functional skills, utilize his Braille skills to support the acquisition of new skills, and build his math vocabulary to functionally utilize math concepts for real life applications. The California School for the Blind concluded that Student's ninth grade, graduation track program, with modified and supported core curriculum was inappropriate. The report also stated that Student would be dependent on others for all academic learning unless he learned the value of his functional skills, and provided the example of Student being able to judge success after cooking a meal as learning the value of that skill.

37. With regard to technology, the California School for the Blind found that Student demonstrated little knowledge of the iPad without direct instruction, could only push the start/stop button on the Victor Reader Stream to control playback of a recording, but could not use other functions such as locating and playing books on the device, and did not understand how to use the record button, or how to play back his own voice recordings. The Victor Reader Stream and the iPad were recommended for

recreational use. California School for the Blind observed Student had good keyboard writing skills, but exhibited rote technology skills with little understanding. California School for the Blind recommended the Mountbatten braille, an electronic braille with speech feedback for each keystroke and whole words, and that Student be taught computer keyboard commands to launch a program, create/open a file, navigate, edit and print a document, navigate websites and complete searches with assistance.

38. The California School for the Blind concluded that Student's orientation and mobility skills were impacted by conceptual and behavior challenges, in that his distractibility often interfered with the awareness of his surroundings. They viewed Student's distractibility as a sensory seeking issue to be addressed by occupational therapy, and recommended using consistent strategies for maintaining focus and re-direction to help Student control his distractibility while traveling. Because Student was not traveling independently at the time of the assessment, they recommended direct instruction from a certified orientation and mobility instructor, and that all the skills taught to Student be directly taught to those who worked with Student, to help him become as independent as possible. Student did not demonstrate an understanding of the tactile representation of an intersection when presented with a mapping board; did not spontaneously use protective techniques when traveling without his cane; used his full palm trailing with this hand along a flat surface which caused him to be distracted by all of the objects on top of the surface; did not keep his whole body in good alignment and veered to one side even when requested to walk straight forward; did not use any systematic search techniques to retrieve dropped objects; and was unable to effectively use landmarks for orientation. He possessed good cane skills, stored/retrieved his cane independently, and could safely identify stairs, but was uncertain what to do with his cane when he traveled with a human guide. He had difficulty following verbal directions for a new route, but once he learned a specific short

route, he executed the route effectively if there were no distractions and if he did not make a wrong turn. If he became disoriented he did not demonstrate the problem-solving skills to re-orient himself. Student needed repetition to learn a new skill and maintain his appropriate level of efficiency, so an orientation and mobility specialist was recommended to personally, and regularly, monitor Student's progress and the expertise of those assisting Student. The IEP team did not have time to finish discussion on all issues regarding Student's IEP, so they agreed to meet again.

#### May 28, 2013 IEP Team Meeting

39. Another IEP team meeting was held on May 28, 2013. Results of the assistive technology, functional behavior, and occupational therapy assessments were shared with the IEP team. Ms. Gibbons assessed Student with the Write Out Loud Software, and the software calculated that Student produced a paragraph with the speed of 14 words per minute, with one mistake. Student was also assessed with Jobs Access With Speech screen reader, but Student was unable to navigate through the commands. Ms. Gibbons concluded that Student was beginning to develop computer skills, and the Jobs Access With Speech screen reader could help him navigate the computer. Ms. Gibbons recommended the use of a Mountbatten braille and Victor Reader Stream, which allowed Student to listen to audio recordings of fiction and non-fiction. The recommendations of these two technologies were based upon recommendations from the California School for the Blind, and Ms. Gibbons did not duplicate assessing Student with them.

40. Albert Opdyke, a school psychologist with training in positive behavior intervention and supports, conducted the functional behavioral assessment which identified five behaviors of concern: licking/mouthing items, making noises, asking irrelevant questions, repetitive off-task behaviors, and irrelevant off-task verbalizations. Mr. Opdyke concluded that 59 percent of the behaviors were self-stimulatory, which was

a sensory need, and not contingent on a consequence; eight percent were attention seeking; and 33 percent were escape/avoidance behaviors. Mr. Opdyke recommended implementation of a behavior support plan to address the behaviors of concern, but noted that such behaviors had a minor impact on Student's educational performance because Student was easily redirected and remained on task with supervision. A behavior support plan was developed with the assistance of Ms. Ferguson. The behavior support plan identified antecedent and consequence-based strategies to teach replacement behaviors, and ensured that replacement behaviors were relevant, effective and efficient in addressing the functions of the behaviors of concern.

41. The occupational therapist shared her assessment results and provided a proposed sensory diet plan to address Student's sensory needs. Inland Regional Center Service Coordinator, Vivian Folis, attended and shared her observations. Regional Centers are private non-profit entities that administer state-funded, non-educational services for individuals with certain qualifying developmental disabilities. Student's independent expert, Laurie Cottrell, also attended and shared her observations and recommendations with the IEP team.

42. Ms. Folis had been Student's Regional Center Service Coordinator since 2005, and her job included observing Student at home and at school to ensure he had the necessary supports and services in each environment. She usually observed Student every three months. In May 2013, Ms. Folis observed Student at school for approximately one and a half hours. She observed Student in English class working with Ms. Hearon, and concluded that Ms. Hearon and Ms. Watson worked well together to instruct Student. Ms. Folis then observed Student in a library room during independent study, where Student did homework, and worked on his computer and braille with Ms. Hearon. Student worked independently on the braille, including replacing paper when it ran out. Ms. Hearon wrote in English over the materials Student brailled so that Ms.

Watson could correct the work. Ms. Gibbons was scheduled to teach Student that day, but she was not present. The visual impairment aide/ paraprofessional, Norma Gomez, worked with Student because Ms. Gibbons spent her time consulting with Student's teachers. Ms. Gomez worked with Student on a "fill in the blank" assignment where she read a sentence, and Student provided the missing word on his braille. Ms. Gomez asked Ms. Hearon to interpret what Student wrote on his braille because Ms. Gomez did not understand Braille. When Student pulled the handle down on his braille, Ms. Gomez reprimanded Student for playing with the machine when Student was actually using the handle to move to the next line on his braille. Ms. Hearon had to explain to Ms. Gomez that Student was not playing inappropriately with the handle, but using it appropriately. Based on Ms. Folis' observations of Ms. Gomez's body language/gestures, and tone used with Student, she credibly concluded that Ms. Gomez did not know how the braille worked, and that Ms. Gomez did not provide Student with proper support. Ms. Gomez also did not have any rapport with Student, was impatient, and frustrated with Student. The observations she shared at the May 28, 2013 IEP team meeting were consistent with her testimony at hearing. Although she had no training in the areas of visual impairment, Braille or orientation and mobility, her 10 years as a Service Coordinator gave her the proper experience and background to conclude whether Student was receiving the proper support.

43. Ms. Cottrell held a bachelor's degree in psychology and a master's degree in educational psychology. She also held a master's degree in special education and an education specialist credential, both in visual impairment, and an autism authorization credential, which allowed her to work specifically with students who are diagnosed with autism, and held an assistive technology certificate. Ms. Cottrell had been a teacher of the visually impaired since 2008 with various school districts and in that capacity worked with visually impaired students, and visually impaired students with other disabilities

such as learning disabilities, autism, and speech and language issues. She consulted for school districts. This was her first time consulting for parents.

44. Ms. Cottrell found Student to be well-behaved, quiet and attentive, and did not stand out from other kids in the class. Student was not an independent traveler, but could navigate between classes with a cane and verbal prompting. She opined that Student could benefit from more orientation and mobility services for practice so he would rely less on verbal prompts, and become more independent.

45. Student demonstrated the ability to learn Braille, but at a slower rate because of his intellectual disability. Since rote memorization was the key to learning Braille rules and contractions, and Student's area of strength, he had a greater propensity to learn Braille than another subject. Student had excellent basic Braille reading techniques including reading with both hands, tracking the Braille smoothly, and could read single space, which was significantly harder than double space Braille reading. Typical blind students were exposed to all the Braille contractions in kindergarten. Even with Student's intellectual disability, Braille contractions should have been introduced to him by end of the first, or beginning of second grade, but Student was not exposed to Braille until the fourth grade.

46. Ms. Cottrell observed Student in braille class in May 2013. There was very little braille in the Braille class she observed, and the lesson was primarily performed orally, with no Braille reading, but a little Braille writing occurred when Student brailled a few sentences that were read to him. She found that the instructional lesson was unhelpful to Student, because it was too easy and did not target difficult areas and skills which were at Student's instructional level. The lesson focused on phonemic awareness and focused on areas which Student did not appear to have difficulty such as letters, initial and ending sounds, vowel sounds and blending of sounds into words—areas which the California School for the Blind's 2007 report



concluded that Student was the best in his class. She did not see Student use any assistive technology. She saw Student use a Perkins braille, which she compared to a typewriter, and did not see Student being provided with any textbooks.

47. Ms. Cottrell reported to the IEP team that she observed Student in his English, Braille, and geography classes in May 2013. She observed that Student sat with Ms. Hearon in the back of the class working on a workbook page to answer questions about Dr. Jekyll and Mr. Hyde. She shared that Student had good Braille reading technique, could load paper in the braille and write his responses independently, but needed a lot of prompting to keep working and raise his hand to ask a question, and needed help in choosing descriptive words to include in his answer. While Student understood factual information, he was unable to draw inferences from the story, and Ms. Hearon reworded questions, providing concept development, and background knowledge for Student. Ms. Cottrell observed that Student was able to use his cane to travel to his Braille class with some verbal prompting from Ms. Hearon. In Braille class, Student was able to identify the word beginning with "wh" when given pair of words to choose from, but could not name objects that were "white" without prompting such as ice cream, snow, potatoes, and clouds. He successfully read sentences and was able to identify the "wh" word in the sentences, and identify punctuation at the end of the sentences. When asked to write three sentences using "which," Student had difficulty formulating original sentences and repeated sentences that had already been used as examples. Student also worked on apostrophe and its indication of possessiveness. Student was awarded time on the computer after he was done with his lesson. He used Write Out Loud software that Ms. Hearon loaded for him. He then transitioned to geography class where the class viewed the movie *Invictus*. Ms. Hearon gave a running narrative to Student of what happened on screen. Ms. Cottrell observed that Student behaved appropriately throughout her observation with the exception of a question or

two that were off-topic in English class, and several off-topic comments during Braille class, but he was capable of redirection without incident.

48. Ms. Cottrell recommended the Cranmer abacus as a replacement to the bead counting tool which District mistakenly referred to as an abacus in IEP documents. A Cranmer abacus, with its place value tool, was used to assist Braille students in math calculations, and typically introduced to students in kindergarten or first grade when they start learning math with place values. Ms. Cottrell observed Student using a counting tool, not a Cranmer abacus, at home and at school in May 2013.

49. District offered specialized academic instruction of 235 minutes daily in a self-contained, separate class, orientation and mobility collaboration services of 200 minutes yearly, vision impairment itinerant services of 150 minutes weekly, with 30 minutes weekly of consult time, and a one-to-one aide's services for 360 minutes daily to assist Student with his academics. Student was offered placement in a life skills program in response to the California School for the Blind's recommendation. The program addressed functional academic and daily skills, and Student would be on an alternative curriculum which did not require an exit exam, and would award a certificate of achievement instead of a high school diploma. Respondent also offered extended school year with one-to-one aide support and speech and language services. Visual impairment and orientation and mobility services were not offered to Student for the extended school year because the visual impairment and orientation and mobility staff did not work during the summer, but that staff would collaborate in advance with the summer school teacher to provide the needed Braille materials to Student. Individual goals and the amount of services offered were discussed during the rest of the IEP team meeting. The decrease in time to 200 collaboration minutes per year reflected a scaling back based upon the IEP team's determination that Student was a non-independent traveler, refocusing the skills taught to basic, assistive, safe travel orientation and

mobility skills. Mr. Casias cited to the section of the California School for the Blind report which stated that “[Student’s] understanding of language was at, or below, the 1st percentile, and was both idiosyncratic and unconventional. Orientation & Mobility skills were impacted by conceptual and behavior challenges”, as support for the District members of the IEP team’s conclusion that Student did not have the intellectual ability to travel independently. Ms. Cottrell shared that Student required more direct Braille instruction daily because he was still a beginning Braille student. District disagreed that more direct instruction was needed because Student had exposure to other Braille supports and materials throughout his school day. District added 30 minutes monthly of visual impairment consult time.

50. Mr. Casias drafted the orientation and mobility goals appearing in the May 28, 2013 IEP. The baseline for the first goal was that Student was most comfortable holding hands with and tended to push forward ahead of his human guide. The goal was “By 5/28/14 [Student would] hold the elbow of a human/sighted guide, while keeping a half-step pace behind the guide, and subsequently pass through a narrow passage way, a doorway and traverse a set of stairs with guidance/assistance 3/4 times with 100% accuracy via teacher observation.” By September 28, 2013 and January 28, 2014, Student would achieve the goal one out of four times, and two out of four times, respectively, with 100 percent accuracy. The baselines for the second orientation and mobility goal were that Student had no previous cane training, was not sure what to do with the cane, and did not use it in crowded areas. The goal was “By 5/28/14, [Student would] pull the tip of cane closer to body independently in crowded areas to avoid tripping others during human/sighted guide with guidance/assistance 3/4 times with 100% accuracy via teacher observation.” By September 28, 2013 and January 28, 2014, Student would achieve the goal with a physical prompt, three out of four times, with 100 percent accuracy. The baseline for the third orientation and mobility goal was that

Student used the back of his hand with hands trailing on top of counter, to avoid exploring all objects within reach which caused distractions. The goal was "By 5/28/14, [Student would] independently use hand trailing with back of hand and fingers slightly curled along front edge of counters with guidance /assistance 3/4 times with 100% accuracy via teacher observation." By September 28, 2013 and January 28, 2014, Student would achieve the goal with one physical and one verbal prompt, and then with one verbal prompt, respectively, three out of four times with 100 percent accuracy. These three orientation and mobility goals were focused on attaining accuracy with specifically stated basic skills and safety awareness, both of which were areas of deficit as identified by the California School for the Blind, and measureable by observation, based on percentage of success. Parent consented to the May 28, 2013 IEP for the 2013-2014 school year.

51. Throughout the 2013-2014 school year, Mr. Casias personally oversaw Student's orientation and mobility program, and trained paraprofessionals working with Student. At hearing, he concluded that Student made progress in the orientation and mobility goals, and was able to safely travel around the campus.

#### 2013 Extended School Year

52. Student's special education teacher during the 2013 extended school year was Ben Mannes. Mr. Mannes held a bachelor's degree in psychology, a master's degree in school counseling, and a multiple subject teaching credential. He had experience teaching a moderate/severe class for three years at the Los Angeles Unified School District. Mr. Mannes worked on academic goals with Student which included following five step directions in preparing meals, performing "dollar-up" strategy of handing a cashier the correct number of dollar bills for a purchase, maintaining a conversational topic through five conversational turns, raising his head and facing his conversational partner, brailleing contractions in simple sentences including recipes, following three

rules for touring a grocery store, playing a minimum of three games, and using a daily schedule to transition to different activities which required Student to Braille his daily schedule, and to keep track of it in his notebook. Mr. Mannes' basis for concluding that Student made progress toward the above goals was that Student engaged in those activities. Mr. Mannes did not know whether Student regressed or progressed with his Braille contractions, but believed Student progressed by virtue of having had the opportunity to use the braille. Mr. Mannes did not know whether Student regressed or progressed in the area of orientation and mobility, but he did not observe any difficulties with orientation and mobility in Student during the 2013 extended school year. Ms. Watson informed Mr. Mannes that Student would not receive Braille instruction or orientation and mobility services during the extended school year because Student would not regress in those areas. Ms. Hearon brailled materials selected by Mr. Mannes to be taught to Student. Student brailled assignments and his schedule for Mr. Mannes. Ms. Hearon also read and wrote in English for Mr. Mannes the documents which Student brailled because Mr. Mannes could not read Braille.

53. During the 2013-2014 school year, Ms. Gibbons spent 80 percent of the 150 minutes weekly teaching Student Braille skills, and Ms. Gomez spent 20 percent of the time with Student practicing the skills taught by Ms. Gibbons.

#### EXPERT WITNESSES

Ms. Cottrell

54. At the hearing, Ms. Cottrell opined as to the appropriateness of District's program. In her opinion, Student should be provided with textbooks and materials that were provided to his sighted peers in both Braille, and in an audio format, especially if the text were above Student's independent reading level. This would enable Student to listen, even though he could not read, and follow along in Braille. He needed access to

all materials in Braille because it was his only medium for literacy, and learning to write and spell. She recommended that Student receive a minimum of three hours a week of direct Braille instruction, not including consultation time, to compensate for the inappropriate quantity and quality of Braille instruction he received during the statutory period which deprived him of a FAPE. She believed that Student had inadequate exposure to orientation and mobility services, but did not have an opinion on how much delay Student suffered as she was not a certified orientation and mobility instructor. Since Braille was the only means of obtaining literacy for Student, District's offer of extended school year without any Braille instruction was akin to having a sighted student attend summer school without reading and writing instruction.

Jane Vogel

55. Ms. Vogel held a master's degree in special education and has California teaching credentials in teaching the visually impaired and those who were learning, physically, and severely handicapped. She presented at, and attended, the annual California Transcribers and Educator of the Blind and Visually Impaired conference for over 30 years, was a part-time faculty member at Cal State University of Los Angeles, supervised numerous student teachers in the Program for Visual Impairment, and was one of the contributing authors of the 2014 and 1997 editions of the Program Guidelines for Students Who Are Visually Impaired developed for the California Department of Education. She taught the visually impaired and the visually impaired with multiple disabilities for more than 10 years, worked as a program coordinator for the visually impaired, and consulted with many school districts to revamp their visually impaired program including educating hundreds of teachers of the visually impaired. She was retained as an expert consultant over 50 times on behalf of school districts, and under 10 times on behalf of students.

56. Ms. Vogel opined that California and federal law required that all blind students received a functional vision and medium assessment. This necessitated looking into a child's assistive technology needs, the status of a child's vision and future needs, and the presence of other disabilities. She also opined that a visual impairment instructor had to have a bachelor's degree and a cleared credential to teach the visually impaired. A visual impairment aide was a non-certificated paraprofessional supervised by a certificated visual impairment instructor, and authorized to reinforce what a visual impairment instructor taught, but could not provide instruction. It was more difficult to properly identify a blind student's other disabilities than a sighted student's disabilities because there were no specific tools to assess students who were totally blind. It was undisputed that it was difficult to assess a blind pupil's abilities.

57. Ms. Vogel reviewed all 2011, 2012 and 2013 IEP's, reports by the California School for the Blind, the 2011 orientation and mobility assessment, the 2013 assistive technology assessment, the occupational therapy assessment, all communications amongst Parents and District, Student's work samples, and District's notations of the Braille contractions Student learned. She also observed Student in April 2014 at school. She opined that because Student was intellectually disabled, the amount of Braille instruction he receive should increase, not decrease, to compensate for the slower learning rate. She found that Student should have been taught Nemeth code from at least 2011, and taught to use the Cranmer abacus, a basic tool, which would allow him to add, subtract, and multiply as a calculator would. The counting device District provided Student was deficient in that it only allowed him to count and did not permit him to perform math. This hindered Student's development of math skills, and as of May 2013 rendered him still unsuccessful at adding or subtracting when the sum or difference was greater than 10.

58. Ms. Vogel opined that Student needed at least one to two hours each day of Braille instruction from a visual impairment instructor for one year to compensate for the inappropriate quantity and quality of Braille instruction he received in the two years prior to the filing of the complaint. She believed that Student's instruction should include Braille reading which needed to be focused on learning the rest of the Braille contractions, Braille rules and formatting, and Nemeth math. Although Student learned some contracted Braille, he did not use it properly and often lapsed into un-contracted Braille. Student's instruction should include assistive technology such as the Mountbatten brailler, the Jobs Access With Speech screen reader software so that he would become computer literate, and use of the Victor Reader Stream for downloading curriculum and reading/accessing books. Student's instruction should also include the Expanded Core Curriculum which were all skills a visually impaired student needed to learn in addition to the common core curriculum. These Expanded Core Curriculum skills included Braille, listening, organizational and study skills, functional academics, independent living, self-determination, social and orientation and mobility skills, career education, and a recreation/leisure program.

59. Ms. Vogel was not a certified orientation and mobility instructor, but worked on state guidelines for orientation and mobility, and collaborated with orientation and mobility instructors throughout her career to determine the appropriate quantity of orientation and mobility service a student should receive. She was the joint action committee chair of both orientation and mobility organizations in California where standards of orientation and mobility services were routinely discussed for the purpose of making recommendations for the state. She also worked on the accreditation of orientation and mobility program for San Francisco State University to determine whether they did things appropriately. Ms. Vogel opined that the frequency and duration of Student's orientation and mobility services were too low and the



orientation and mobility goals from 2011 to 2013 were vague, non-specific and un-measurable, especially with respect to the goal that provided that Student would be better at orientating to the campus. In her experience, a high school student, regardless of multiple disabilities, would receive one to two hours a week of orientation and mobility instruction. Therefore, she recommended the same amount for Student on an ongoing basis.

Cheryl Sjostrom

60. Dr. Cheryl Sjostrom held a bachelor's degree in Diversified Multiple Subject Credential, and a master's degree in special education, with a specialist teaching credential for working with the physically handicapped, visually impaired, and severely handicapped. She also taught master level students in special education, general education and early childhood classes at Brandman/Chapman University, and at the California State University in San Bernardino, Fullerton, and Los Angeles. She taught classes in Braille Instruction, Specialized Methodology for Visually Impaired Students, Functional Vision, Technology for Visually Handicapped Students, and Communication Skills for the Visually Impaired. She held positions as a special services principal for the San Bernardino County Superintendent of Schools, a program coordinator of special services for Fontana Unified School District, director of special services for Redlands Unified School District, and a consultant with the East Valley SELPA. As consultant for the East Valley SELPA, she worked with special education teaching staff, conducted assessments, wrote goals and present levels of progress, and trained staff. She was Student's visual impairment instructor during his elementary school years.

61. Dr. Sjostrom based her opinion on a review of Student's February 2014 Braille progress sheets, which showed the Braille contractions Student knew and did not know, the 2011, 2012 and 2013 IEP's and goals and services Student received during that time, reports from the California School for the Blind, and her observation of

Student in April 2013. She did not review any of Student's work. Dr. Sjostrom explained that all of the visual impairment goals were properly aligned with Braille standards and properly broken down to address Student's skills with measurable results. She concluded that the 2007 California School for the Blind's recommendation that Student receive a minimum of one hour a day, four to five days a week for three years of Braille instruction exposure included the time Student had with a non-credentialed paraprofessional trained by a credentialed visual impairment instructor, and not just direct instruction by a credentialed visual impairment teacher. However, she was not aware that Student ever received the quantity of Braille instruction recommended in the 2007 California School for the Blind report, and viewed the report as referencing the need for that quantity of consistent Braille literacy instruction for those in the primary grades, and those beginning to learn Braille, and not to Student, a ninth grader. She considered that Student progressed on his goals and the number of other services Student received in his IEP's, and stated that any increase in Braille instruction time would mean less time for Student in other classes and services, and opined that the 150 minutes of collaboration visual impairment services offered to Student from 2011-2013 was appropriate, and well balanced based on his disability categorization.

62. The purpose of a learning media assessment was to determine the primary medium a blind child would use to access information, and whether the child would be a non-reader. She opined that Student did not need such an assessment because it had already been determined that Student was a Braille reader.

Dr. Berry

63. Dr. Berry supervised the visual impairment and orientation and mobility staff. He held a master's degree in special education and a doctorate degree in special education policy and an administrative credential. He and other District witnesses agreed that the role of the credentialed visual impairment instructor was to teach new

concepts to Student and train the non-credentialed paraprofessionals working with Student to practice the skills taught by the visual impairment instructor. He and other District witnesses agreed that the role of the credentialed orientation and mobility instructor was to teach new material including creating routes for Student to travel around campus and to train the non-credentialed paraprofessionals working with Student to practice the skills and routes taught by the credentialed orientation and mobility instructor. The non-credentialed visual impairment and orientation and mobility paraprofessional's role was to practice and reinforce what had been taught to Student. Dr. Berry was familiar with Student's IEP's, goals and services and was a member of Student's IEP team.

64. Ms. Rettig was the braillist who brailled Student's work and was a paraprofessional who was supervised by both Ms. Chhor and Mr. Casias to provide route practice to Student. Ms. Rettig took a Braille transcribing course at Cypress College and received updated Braille code training. Dr. Berry considered Ms. Chhor, Mr. Casias, Ms. Gibbons, Ms. Rettig, and Ms. Gomez to be very good instructors and paraprofessionals and never had any complaints regarding their work, with the exception of Mother who complained about Ms. Chhor around September 2011. Dr. Berry determined that Mother's complaint about Ms. Chhor resulted from a personality conflict, and because Mother had difficulty understanding Ms. Chhor's accent, and was not related to Ms. Chhor's skills. After Mother's complaint, Ms. Chhor continued being the orientation and mobility instructor, and since there were no changes in routes, Ms. Rettig continued to practice the routes with Student without further help from Ms. Chhor.

65. Dr. Berry, Dr. Sjostrom, Ms. Metheny and Anne Marie Foley, the school psychologist, all agreed that the California School for the Blind were the experts in conducting a comprehensive assessment of Student. They all agreed that the California School for the Blind accepted referrals when a district was done assessing and was

providing services to a student, and that there was no requirement that District must assess Student immediately before referring Student to the California School for the Blind for assessment. They all agreed that Student's IEP was designed to match his primary disability eligibility designation as a child with multiple disabilities, intellectual disability and autism, and their belief that Student's intellectual disability and autism impacted his education more than his visual impairment. They concluded Student received sufficient educational benefit, because he made progress on his goals. They attributed Student's slow/minimal progress to his intellectual disability and autism, not to the inadequate quantity and quality of Braille instruction, and orientation and mobility services offered. Because of Student's intellectual disability and autism, they did not believe Student could benefit from more direct instruction, and concluded that the amount of Braille instruction and orientation and mobility services offered was appropriate to meet his needs.

66. Student timely received all materials selected from the textbook by his teachers, with very few exceptions. Further, the brailled materials were brailled based on the contractions that Student had learned, omitting the contractions he had not yet learned and using regular Braille letters on those occasions.

67. Dr. Berry explained that the primary reason for providing extended school year was for Student to maintain certain skills without regression. Dr. Berry explained that visual impairment and orientation and mobility services were not offered to Student during extended school year 2012 and 2013, not because staff was unavailable during the summer, but because Student showed no likelihood of regression in these areas in the summer. Dr. Berry's testimony regarding no fear of regression as a reason for not offering Braille instruction and orientation and mobility services contradicted the May 2013 IEP document which stated that the visual impairment and orientation and mobility staff did not work during the summer. Dr. Berry explained that when he made

that statement at the May 2013 IEP team meeting, he meant that Ms. Gibbons and Mr. Casias specifically were not available, and did not mean to convey that all the visual impairment and orientation and mobility staff was not available, and that they were available had Student needed their services. This testimony was not as persuasive as the May 2013 IEP document. Further, neither the May 28, 2013 IEP, nor the February 29, 2012 IEP mentioned that the team considered that Student would not regress during the summer of 2012 and 2013 without Braille instruction and orientation and mobility services. Although Dr. Berry explained that there was no discussion of regression because it was not a concern, and the discussion focused on Student's progress, this was not as persuasive as the IEP documents which typically documented the reasons services were offered, or withheld, to Student.

Ms. Gibbons

68. Ms. Gibbons held a bachelor's degree in education and was certified for teaching special education, specifically the visually impaired, from kindergarten to twelfth grade. She was Student's visual impairment instructor for eight years, and had access to the 2007 California School for the Blind report prior to 2011. As Student's visual impairment teacher, she proposed the quantity of Braille instruction Student received. She agreed that Student had basic prerequisite knowledge and skill for the acquisition of Braille reading and writing. She did not interpret that the 2007 California School for the Blind report required District to provide Student with instruction from a credentialed visual impairment instructor for one hour a day, four to five days a week, and opined that District's offer of comprehensive services in Student's IEP's satisfied the recommendations in that report.

Ms. Metheny

69. Ms. Metheny opined that one hour a week, four to five days a week of direct braille instruction would interfere with Student's 2013-2014 goals and life skills curriculum.

Ms. Foley

70. As the school psychologist, Ms. Foley attended the California School for the Blind's meeting after its March 2013 assessment and all of Student's 2013 IEP's. She held both a bachelor's and a master's degree in psychology and school psychology, respectively. Even though she had no personal experience administering or was familiar with only some of the tests administered to Student by the California School for the Blind, Ms. Foley was qualified as a hearing expert to opine on the appropriateness of District's IEP offer to Student. From a review of Student's goals from January 2012 to January 2014, Ms. Foley concluded that Student made progress in all areas which were consistent with his cognitive abilities. She characterized Student's growth throughout the years as slow and uneven with strength in rote learning and memorization, and concluded that he received a FAPE based on the categorization of his disabilities.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>4</sup>

1. This due process hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to

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<sup>4</sup> Unless otherwise indicated, the legal citations in this Introduction are incorporated by reference into the analysis of each issue decided below.

implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)<sup>5</sup>; Ed. Code, § 56000, et seq.; and 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 to 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); Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, and which sets forth the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate

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<sup>5</sup> All subsequent references to the Code of Federal Regulations are to the 2006 edition.

in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 200 [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*, to date, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “‘meaningful’ educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents or local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6)(f) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing



is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C) & (D); Ed. Code, § 56505, sub. (l).) At the hearing, the party filing the complaint, in this case Student, 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 due process hearings is preponderance of the evidence].)

#### ASSESSMENTS (ISSUES 1B AND 2B)

5. Student contends he was denied a FAPE because District failed to assess Student's assistive technology, functional vision and Braille instruction needs, and did not assess Student before referring Student to the California School for the Blind. District contends Student was properly assessed and District was not required to reassess Student until his triennial assessment in 2013. For the reasons set forth below, Student was not denied a FAPE on this basis because District was not required to assess Student for his functional vision and Braille instruction needs, or before referring Student to the California School for the Blind. Further, although District failed to assess Student for assistive technology, Student failed to demonstrate District's failure to timely assess in assistive technology impeded Student's access to a FAPE, significantly impeded his Parents' opportunity to participate in the decision-making process, or deprived Student of education benefits.

6. Assessments are required in order to determine eligibility for special education, and what type, frequency and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected

disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related services needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) All referrals for special education and related services shall initiate the assessment process and shall be documented. When a verbal referral is made, staff of the school district, special education local plan area, or county office shall offer assistance to the individual in making a request in writing, and shall assist the individual if the individual requests such assistance. (Cal. Code Regs., tit. 5, § 3021, subd.(b).) When a district's duty to assess a student is triggered, the assessment process begins with a written referral for assessment by the student's parent, teacher, school personnel, or other appropriate agency or person. (Ed. Code §§ 56302, 56321, subd. (a); Cal.Code Regs., tit. 5, § 3021.) Within 15 calendar days of referral, subject to certain exceptions, the district must give the parent a written assessment plan which explains, in language easily understood, the types of assessments to be conducted. (Ed. Code, §§ 56043, subd. (a), 56321, subd. (b).) The parent then has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c).) The district then has 60 days from the date it receives the parent's written consent for assessment, excluding vacation and days when school is not in session, to complete the assessments and develop an initial IEP, unless the parent agrees in writing to an extension. (Ed. Code, §§ 56043, subds. (c) & (f), 56302.1.)

7. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v.*

*Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

### Assistive Technology

8. Student argues he should have been formally assessed for assistive technology needs because the sampling method District utilized was incomprehensive and inappropriate. District contends that that no standardized method of conducting assistive technology assessments existed, and that Student was properly assessed on an ongoing basis as to his assistive technology needs.

9. When developing a pupil's IEP, the IEP team shall "[c]onsider the communication needs of the pupil," (20 U.S.C. § 1414(d)(3)(B)(iv); Ed. Code, § 56341.1, subd. (b)(4)) and shall consider whether the pupil requires assistive technology services and devices. (20 U.S.C. § 1414(d)(3)(B)(v).) An "assistive technology device" is defined as "any item, piece of equipment or product system [other than a surgically implanted device] . . . that is used to increase, maintain or improve functional capabilities of an individual with exceptional needs." (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.) Assistive technology devices or services may be required as part of the child's special education services, related services, or supplementary aids and services. (34 C. F. R. § 300.105.)

10. Mother first requested an assistive technology assessment at the February 29, 2012 IEP team meeting. There was no evidence that District assessed Student's assistive technology needs in response to Mother's request. The IEP team next discussed the need for an assistive technology assessment when Mother requested an iPad for

Student during the September 28, 2012 IEP team meeting. At that time, both Dr. Berry and Ms. Gibbons explained that the assessment entailed trying out a variety of assistive technologies and software programs, and based on the information obtained, a formal assistive technology assessment referral could be made at the December 2012 annual IEP team meeting. However, the annual IEP team meeting did not begin until January 22, 2013, and Ms. Gibbons did not conduct an assistive technology assessment until March 2013, and did not present her recommendations regarding Student's assistive technology needs until the May 28, 2013 IEP team meeting. Again, District did not take any steps to assess Student in this area in response to Mother's request. District did not conform to IDEA procedure when it failed to assess Student in this area following Mother's requests.

11. Although District's failure to timely assess in the area of assistive technology in the 2011-2012 and 2012-2013 school years was a procedural violation, the evidence showed District provided appropriate assistive technology to meet Student's needs and that he was provided a FAPE. The evidence showed that during both the 2011-2012 and 2012-2013 school years, Student had access to assistive technology which included a personal computer with the Write Out Loud software, a talking calculator, multiple Perkins brailers, Pictures in a Flash, a Cranmer abacus, a counting device, a Braille clock and a tape recorder. For the 2013-2014 school year, Student had the same assistive technologies available to him in the prior two school years, and a Mountbatten braille and printer, a Victor Reader Stream, and Jobs Access With Speech screen reader software.

12. While Student argued that in the 2011-2012 school year, District should have provided him with a Cranmer abacus, an electronic braille, Jobs Access With Speech software, and a Victor Reader Stream, there was no persuasive evidence presented that the assistive technology Respondent provided to Student were

insufficient to address his needs, or that Student had acquired the requisite skills to access the assistive technologies which Student claimed that District should have provided to him.

13. Although the California School for the Blind discovered in its 2013 assessment that Student was ready to use a Mountbatten braille, there was no evidence presented that providing Student with the Mountbatten braille in prior years was necessary to the provision of a FAPE, especially since Student had been provided with the Perkins braille, which he used effectively. Subsequent to the California School for the Blind's 2013 assessment, District provided Student with a Mountbatten braille, printer, a Victor Reader Stream, and Jobs Access With Speech screen reader software. Student also argued that District did not provide him with an iPad. However, the 2013 California School of the Blind assessment found Student exhibited rote technology skills, but with little understanding, and specifically that Student had little knowledge of the iPad and Victor Reader Stream. They recommended the iPad and Victor Reader Stream for Student's recreational use and not directly for instruction. Therefore, while District was not required to provide the iPad or the Victor Reader Stream for school, they nonetheless provided Student with the Victor Reader Stream.

14. Student also argued that District never provided Student with a brailled textbook for accessing his education. While that was true, Student was timely provided with brailled handouts representing sections of the textbook that were taught. District persuasively showed that a brailled textbook was not required because the entire textbook was not taught, but only sections of it. This was reasonable since un-contracted Braille takes up a lot of space, and a basic textbook would be 30 or 40 volumes in un-contracted Braille. Because Student only knew approximately 83 of the 256 Braille contractions in May 2013, requiring District to provide him with a Braille

textbook would not be helpful, or reasonable, especially when the teacher did not teach the entire book.

15. Student's argument that Ms. Gibbons' March 2013 technology assessment was inappropriate because her assessment involved the informal Student sampling of various equipment, and incorporated assistive technology findings from the California School of Blind's 2013 assessment was unpersuasive because there was no evidence supporting that District needed to follow any formal or standardized testing for assistive technology, or that her collaboration with the California School for the Blind was improper. The difficulty of assessing the visually impaired with multiple disabilities was undisputed, and there was no evidence that any other assessment method existed to assess Student's assistive technology needs other than through sampling. Student argued that Ms. Gibbons improperly recommended using the Mountbatten braille without sampling it with Student was also unpersuasive because the California School for the Blind already sampled the device with Student and recommended it. It was not necessary for Ms. Gibbons to duplicate the same when her assessment and the California School for the Blind assessment were less than two months apart.

16. Student did not prove that he was denied a FAPE by District not conducting assistive technology assessments when requested because the evidence did not show that this procedural violation impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process, or deprived Student of educational benefits.

#### Functional Vision and Braille Instruction Needs Before Referral to The California School for The Blind

17. Student contends he should have been assessed for functional vision and Braille instruction needs, and that assessments should have been performed before referral for assessment to the California School for the Blind. District contends that a

functional vision assessment was not necessary because they had already determined that Student accessed information by reading Braille. District also contends that they did not need to reassess Student before referring him to the California School for the Blind for assessment because it was less than three years before his last assessment.

18. In the case of a student who is blind or visually impaired, the IEP team shall provide for Braille instruction and the use of Braille unless it determines after an assessment of the student's needs that instruction or the use of Braille is not appropriate for the student. (Ed. Code § 56341.1, subd. (a)(3).) A functional vision assessment shall be used as one criterion in determining the appropriate reading medium or media for the pupil. (Ed. Code §56352, subd. (a).) Each visually impaired pupil shall be provided with the opportunity to receive an assessment to determine the appropriate reading medium or media, including Braille instruction, if appropriate, for that pupil. (Ed. Code §56352, subd. (e).)

19. Prior to referring a pupil for further assessment to California Schools for the Deaf or Blind or the Diagnostic Schools, districts, SELPA's, counties, or other agencies providing education services, shall first conduct assessments at the local level within the capabilities of that agency. Results of local assessments shall be provided to parent(s) and shall state the reasons for referral to the State School. Results of local assessments shall accompany the referral request. (Cal.Code Regs., tit. 5, § 3025, subd. (a).) The Schools for the Deaf and Blind and the Diagnostic Schools shall conduct assessments pursuant to the provisions of Education Code section 56320 et seq. (Cal.Code Regs., tit. 5, § 3025, subd. (b).)

20. District did not assess Student during the 2011-2012 and 2012-2013 school years regarding his needs for Braille instruction because he had already been deemed eligible for special education, and provided with Braille instruction. Therefore, District was not required to reassess him unless warranted by his educational needs or

related services, or the last assessments were more than three years apart. Since Ms. Gibbons conducted vision assessments in October and November of 2010, and recommended visual impairment services, District was not required to reassess Student in 2011 or 2012 because it was still within three years. Student did not present any evidence that a functional vision assessment was not performed, or that District's failure to perform this assessment more recently deprived him of a FAPE. The evidence showed that Student was using Braille, the medium that would have been determined through a functional vision assessment, and that Student was also being provided Braille instruction. Dr. Sjostrom confirmed that the purpose of this assessment was to determine the primary medium from which a blind child accessed information and whether the child would be a non-reader as provided under Education Code section 56352, subdivisions (a) and (e). Since the evidence all supported that Student was a Braille reader, and there is no evidence a different result would be obtained, Student did not meet his burden of persuasion that District needed to assess him in this area. Student did not demonstrate that he was deprived of a FAPE because a functional vision assessment should have been conducted closer in time to the California School for the Blind referral for assessment.

21. California Code of Regulations, title 5, section 3025 only required that District first conduct assessments at the local level before referring Student for further assessments to the California School for the Blind, but did not require that those assessments be conducted immediately before referral. Since District assessed Students in vision in October and November of 2010, and in orientation and mobility in December 2010 and January 2011, before the date District referred Student for assessment by the California School for the Blind, District was in compliance with California Code of Regulations, title 5, section 3025 regarding assessment of Student before referral to the California School for the Blind. Thus, District did not violate any



required timetable for assessment before referring Student for assessment to the California School for the Blind.

22. Finally, there was no evidence supporting that any further assessments were necessary for the 2013-2014 school year because the California School for the Blind had conducted a comprehensive assessment in March of 2013. Student did not meet his burden of persuasion that any of District's assessment failures resulted in a denial of FAPE during the statutory period.

#### PARENTAL PARTICIPATION AND WRITTEN NOTICE FOLLOWING IEP TEAM MEETINGS (ISSUES 1A, 1E, 1F, 2A, AND 2E)

23. Student contends that District did not provide parents with the opportunity to express their concerns or meaningfully participate in forming Student's IEP's, and that District failed to provide proper written notice following IEP team meetings. District contend that Parents provided input and their concerns were considered at IEP team meetings, but that no written notice following IEP team meetings was required under the law. For the reasons set forth below, Student did not meet his burden of persuasion on these issues throughout the statutory period.

24. An IEP team is required to include: one or both of the student's parents or their representative. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

25. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East*

*Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

26. Parents had the opportunity to ask questions, express their concerns and disagreements at all IEP team meetings even though District did not incorporate all of Parents' suggestions. At the December 6, 2011 IEP team meeting, parents requested assessment referral to the California School for the Blind. At the February 29, 2012 IEP team meeting, Ms. Hoyt and Ms. Pearson provided Fast Fact forms to collect data on Student's inappropriate behaviors in response to Mother's concerns regarding same, even though they did not believe those behaviors impacted his learning. Even though the February 7, 2012 IEP team meeting was held in Parents' absence through improper notice, no substantive changes were made to Student's program as a result of that meeting and District reconvened another IEP team meeting on February 29, 2012, to discuss the same issues which were discussed in Parents' absence at the February 7, 2012 IEP team meeting. No changes were made to Student's program until Parents had an opportunity to participate in the reconvened February 29, 2012 IEP team meeting, asked their questions and eventually provided their consent to the changes to Student's program and services. At the 2013 IEP team meetings, both Mother and Ms. Eubanks, attorney for Student, provided input, asked questions, and were given the opportunity to express, and did express, their disagreement with aspects of the educational offer. District considered parental requests for more Braille instruction and orientation and mobility direct services to Student, but disagreed that such would be appropriate for Student. Specifically at the May 28, 2013 IEP team meeting, parents had the opportunity to have Ms. Cottrell share that more Braille instruction were needed because Student was still a beginning Braille Student and needed daily instruction to learn Braille. District members of the team did not agree that more Braille instruction was needed, but added

30 minutes monthly of visual impairment consult time. Parents also had the opportunity to have Ms. Vogel share her observations with the IEP team. Parents had the opportunity to ask questions, express their concerns and disagreements at all IEP team meetings even though District did not always incorporate parents' suggestions.

27. A parent must be provided "written prior notice" when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include a description of the action refused by the school district, an explanation of why the district refuses to take the action, a description of each evaluation procedure, test, record, or report used as a basis for the refused action, a description of any other factors relevant to the district's refusal, a statement that the parents have protection under the procedural safeguards of IDEA, and sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

28. Parents attended all IEP team meetings at which written offers regarding Student's IEP's were made. District provided the IEP documents to Parents at the end of the meetings setting forth the basis and description of the IEP offers. This was all of the notice Parents were entitled to and there was no requirement that District provide additional notice in a separate document following IEP team meetings. District was in compliance. As to Student's contentions that Parents were entitled to some type of written notice after the IEP team meetings, Student did not meet his burden of proof on this issue.

29. Student did not demonstrate with a preponderance of the evidence that any meaningful participation rights were abrogated at any IEP team meetings or that District's failure to provide notice following any IEP team meetings was inappropriate

because there was no requirement that any additional notice be provided following IEP team meetings. Therefore, Student did not meet his burden of persuasion in these areas.

#### ORIENTATION AND MOBILITY GOALS (ISSUES 1C AND 2C)

30. Student contends that the orientation and mobility goals were improper because they were immeasurable and inappropriate for Student. District contends that the goals were proper because they measured Student's progress by teacher observation and were crafted by certified orientation and mobility specialists who worked with Student. For the reasons set forth below, Student demonstrated that District failed to develop appropriate, measurable goals for the 2011-2012 and 2012-2013 school years, but did not show that the inappropriate goals impeded Student's access to FAPE, significantly impeded Parents' opportunity to participate in the decision-making process, or resulted in a deprivation of educational benefits.

31. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) Inappropriate goals are procedural violations of the IDEA. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d at p. 1031).

32. Ms. Chhor wrote Student's one orientation and mobility goal in Student's December 6, 2011 IEP and added another one by the February 29, 2012 IEP, for a total of two orientation and mobility goals for the 2011-2012 school year. District's orientation and mobility expert, Mr. Casias, found both goals inappropriate and shared

reasons for his conclusion at the January 22, 2013 IEP team meeting. The first goal requiring Student to go to specific areas in the classroom, and to and from speech class was inappropriate for someone who was not an independent traveler, and Student was not an independent traveler in December 2011. Further, the baseline for the second goal that Student "continued to be orientated to his campus environment" was an inaccurate account of Student's abilities in December 2011, and the goal which followed of having Student orientated and learning routes to various classroom areas with prompts and assistance was too broad, essentially rendering this second goal immeasurable and inappropriate. Despite Student's file progress notes indicating that Student "partially met" the first goal, and was "making progress" toward the second goal in January 2012, Mr. Casias' opinion regarding the inappropriateness of the two goals as expressed at the January 22, 2013 IEP team meeting was more persuasive. Likewise, Mr. Casias' later hearing testimony, essentially retracting the opinion expressed at the January 22, 2013 IEP team meeting explaining that he had been too critical of the goals drafted by his predecessor, was not as persuasive as the opinion he expressed at the IEP team meeting for developing proper services and supports for Student. Student's orientation and mobility goals for the 2012-2013 school year were the same for the 2011-2012 school year, up until those goals were revised by Mr. Casias at the May 28, 2013 IEP team meeting. Student met his burden of persuasion showing that the two orientation and mobility goals for the 2011-2012 and 2012-2013 school years were inappropriate and/or immeasurable for Student.

33. However, the three orientation and mobility goals as revised and presented by Mr. Casias at the May 28, 2013 IEP team meeting were focused on attaining accuracy, with specifically stated basic skills and safety awareness, and measureable by observation of success based on mastery of the specific skills the goals were drafted to address. Therefore, while Student met his burden of persuasion showing

that the two orientation and mobility goals from the 2011-2012 school year which continued to the 2012-2013 school year were inappropriate and/or immeasurable for Student, Student did not meet his burden of persuasion showing that the three revised orientation and mobility goals presented at the May 28, 2013 IEP team meeting, and used in the 2013-2014 school year, were inappropriate.

34. Although, the orientation and mobility goals from 2011-2012 and 2012-2013 school years were inappropriate, there was no evidence that Student was ultimately deprived of a FAPE because of those goals. At hearing, Student presented only two experts, Ms. Cottrell and Ms. Vogel to testify about the inadequacy of the orientation and mobility services Student received. Ms. Cottrell admitted that she was not qualified to testify as to orientation and mobility because she was not a certified orientation and mobility instructor. Ms. Vogel was also not a certified orientation and mobility instructor. However, her years of experience in collaborating with orientation and mobility instructors along with her experience working on state guidelines for orientation and mobility qualified her to opine on this issue. Yet, Ms. Vogel's opinion was incomplete on this issue. She did not opine specifically that the instruction provided by Ms. Rettig was incorrect, wrong or deficient, or that Student did not benefit from practicing his orientation and mobility skills with her. She did not opine how the inappropriate goals caused any inadequacies in District's provision of orientation and mobility services during these school years. Ms. Vogel's testimony provided no link between the inappropriate goals and their impact on Student's performance of orientation and mobility skills during these school years. On the other hand, District provided evidence that Student was provided with all his orientation and mobility service minutes by a properly trained orientation and mobility paraprofessional, and made some progress in this area. Ms. Vogel's general statements that the orientation and mobility goals were broad and immeasurable, and that other students with visual

impairments and multiple disabilities usually received more orientation and mobility services than Student was insufficient to meet Student's burden of persuasion in this area.

#### PLACEMENT AND SERVICES (ISSUES 1D AND 2D)

35. Student contends that he was denied a FAPE because District did not offer an appropriate placement. Student further contends that the related services offered in the following areas were inadequate: behavior supports, assistive technology, Braille instruction, and orientation and mobility. District contends that Student received the proper placement and related services based on Student's primary and secondary eligibility designations, and that he would be incapable of benefitting from any more services because of his intellectual disability. District also contends that more behavior supports were unnecessary because Student did not have any behaviors which were serious, or impeded his, or anyone else's, access to education. For the reasons set forth below, Student did not demonstrate that his placement or the assistive technology provided to him was inappropriate, or that his behavioral services were inadequate during the statutory period. However, Student demonstrated that District failed to provide adequate Braille instruction by a qualified Braille instructional aide, throughout the statutory period, and failed to provide adequate orientation and mobility services from the beginning of the 2012-2013 school year through October 31, 2012, and during the 2012 and 2013 extended school years.

36. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a

school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Board. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

### Placement

37. Student's complaint also alleged that he was denied a FAPE because his placement was inappropriate during the entire time at issue. District contends that placement was appropriate to Student's intellectual disability and visual impairment needs.

38. In determining the educational placement of a child with a disability a school district must ensure that: 1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; 2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; 3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; 4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and 5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

39. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with



non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the non-academic benefits of such placement"; 3) "the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

40. Although Student alleged in his complaint that his placement was inappropriate during all years at issue, he did not present any evidence whatsoever that District's offer of placement with specialized academic instruction, in a separate class, on a general education campus, was improper during any time period. On the other hand, District presented evidence that Student's teachers throughout the statutory period were properly credentialed special education teachers who could implement his IEP, and that Student was offered special education with maximum exposure to general educational students given his visual impairment and intellectual disability needs. In sum, there was no evidence supporting that District had failed to place Student in the least restrictive environment or that the placement itself was inappropriate. To the contrary, the evidence at hearing focused on the type, frequency and duration of related services such as behavior support, assistive technology, orientation and mobility services, and Braille instruction for reading and math. Student presented no evidence from any source that District should have offered a different placement in order to provide a FAPE. The evidence did not show that Student was deprived of a FAPE because his placement was inappropriate.

#### Behavior Supports

41. Student contends that he should have been provided with individual behavior supports throughout the statutory period because he exhibited inappropriate behaviors. District contend that Student was provided with the proper amount of behavior supports, and did not require more, because he did not exhibit any serious behavior problems which impeded his or others' access to education.

42. California law defines behavior interventions as the "systematic implementation of procedures that result in lasting positive changes in the individual's behavior." (Cal. Code Regs., tit. 5, § 3001, subd. (e).) Behavior interventions include the "design, implementation, and evaluation of individual or group instructional and

environmental modifications . . . designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual's right to placement in the least restrictive environment as outlined in the individual's IEP." (Cal. Code Regs., tit. 5, § 3001, subd. (e).) Behavior intervention is the implementation of procedures to produce lasting positive changes in the student's behavior, and includes the design, evaluation, implementation, and modification of the student's individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student's behavior. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. §1414(d)(3)(B)(i); 34 C.F.R. § 300.324; Ed. Code, § 56341.1, subd. (b)(1).) This type of behavior intervention is referred to as a behavior services plan in California, although there is no statute or regulation that uses that term.

43. In 1990, California passed Education Code section 56520, et seq., which was commonly known as the Hughes Bill, concerning behavior interventions for pupils with serious behavior problems. Regulations implementing the Hughes Bill required that a local educational agency conduct a functional analysis assessment, resulting in a behavior intervention plan, when a student exhibited a "serious behavior problem," and the IEP team found that the instructional/behavioral approaches specified in the student's IEP had been ineffective. (Cal. Code Regs., tit. 5, §§ 3001, subds. (d), (e), and (g).) Effective July 1, 2013, the Hughes Bill was repealed upon the passing of Assembly Bill 86 (AB 86). Under AB 86, an educational agency is no longer required to conduct a functional analysis assessment or create a behavior intervention plan for students exhibiting "serious behavior problems." Instead, the educational agency must follow the IDEA which provides that IEP teams must address behavior when it impedes a student's

or other students' access to education. (Ed. Code, § 56520, amended.) A person recognized by the National Behavior Analyst Certification Board as a board certified behavior analyst may, but is not required to, conduct behavior assessments and provide behavior intervention services for individuals with exceptional needs. (Ed. Code, § 56525, subds. (a) and (b), amended.)

44. During the 2011-2012 school year, Ms. Ferguson provided positive reinforcement strategies to Ms. Hoyt's class, which included Student. While Mother reported at the February 29, 2012 IEP that Student engaged in inappropriate hand flapping and eye-poking behaviors, Student was not provided any individual behavioral services because he did not exhibit any serious behavior problems, and his behaviors did not impede Student's or other students' learning. District responded appropriately to Mother's concerns by developing a Fast Fact form to record behaviors of concern and provided specific scripts to address them when they arose. Student presented no evidence demonstrating that at the time, during the 2011-2012 school year, the type, frequency and duration of behavior supports did not provide a FAPE.

45. Further, in May 2013, District conducted a functional behavioral assessment which revealed that most of Student's behaviors were sensory seeking, and developed a behavioral support plan, and sensory diet to address the behaviors. Consistent with District findings, Ms. Cottrell also reported that Student behaved appropriately during her May 2013 school observation, and that the few off-topic question or comments which occurred were capable of redirection without incident. Just as in the 2011-2012 school year, there was no evidence that Student had serious behavior problems, or that his behaviors impeded his, or other students' learning during the 2012-2013 or 2013-2014 school years. At all times, the evidence showed that Student's behavior in school was adequately addressed. Student was not denied a FAPE on this ground.

## Assistive Technology

46. Student contends that he did not receive adequate assistive technology throughout the statutory period. District contends that Student had access to all assistive technology to access his education.

47. The evidence showed that during both the 2011-2012 and 2012-2013 school years, Student had access to assistive technology which included a personal computer with the Write Out Loud software, a talking calculator, multiple Perkins brailers, Pictures in a Flash, a Cranmer abacus, a counting device, a Braille clock and a tape recorder. For the 2013-2014 school year, Student had the same assistive technologies available to him in the prior two school years, and a Mountbatten braille and printer, a Victor Reader Stream, and Jobs Access With Speech screen reader software. Student was also timely provided with brailled handouts of textbook sections that were taught in class. While Student argued that District should have provided him with a Cranmer abacus, an electronic braille, Jobs Access With Speech software, a Victor Reader Stream, and brailled textbooks, there was no persuasive evidence presented that the assistive technology District provided to Student were insufficient to address his needs, or that Student had acquired the requisite skills to access the assistive technologies which Student claimed that District should have provided to him. Legal Conclusions 10-14 detail the discussion of why the assistive technologies Student received constituted FAPE during the statutory period. Student did not meet his burden of showing that he was denied a FAPE because the assistive technology offered to him was inadequate or inappropriate.

## Braille Instruction with a Qualified Braille Instructional Aide

48. Student contends that he did not receive adequate Braille instruction for mastering math and reading standards with a qualified Braille instructional aide. Student contends that he should have received the amount of Braille instruction recommended

by the California School for the Blind for a beginning Braille reader because that would have enabled him to increase his Braille literacy. District contends that Student would not have benefitted from more Braille instruction because he was intellectually disabled. They believed that Ms. Gibbons' instruction, together with the assistance of various paraprofessionals, provided the proper balance for Student's intellectual disability and visual impairment needs.

49. County offices of education, school districts, and SELPA's shall provide to pupils who, due to a visual impairment, are functionally blind or may be expected to have a need to learn the Braille code as their primary literacy mode for learning, opportunities for instruction to master the Braille reading and mathematics standards which the state board was required to adopt by June 1, 2006. (Ed. Code §56351.9)

50. A school district shall provide opportunities for Braille instruction for pupils who, due to a prognosis of visual deterioration, may be expected to have a need for Braille as a reading medium. (Ed. Code, § 56351.) A school district may provide Braille instruction using a Braille instructional aide who shall be fluent in reading and writing grade two Braille and possesses basic knowledge of the rules of Braille construction, and supervised by a credentialed visual impairment teacher. (Ed. Code § 56351.5, subd. (a).) A teacher who holds an appropriate credential to teach pupils who are functionally blind or visually impaired shall provide Braille instruction. (Ed. Code § 56352, subd. (d).)

51. District did not provide Student with adequate Braille instruction for reading or math with a qualified Braille instructional aide during the 2011-2012 school year. The California School for the Blind's 2007 report recommended that Student be provided a minimum of one hour a day, four to five days a week, for about three years of Braille instruction. District had access to the 2007 report from the California School for the Blind well before 2011. Dr. Sjostrom, Dr. Berry, Ms. Metheny and Ms. Foley all agreed that the California School for the Blind were the experts in conducting

comprehensive assessments of Student. Yet, District ignored the amount of Braille instruction recommended by the California School for the Blind on the basis that Student's visual impairment was not his primary eligibility, but only his secondary eligibility for special education services. District determined that Student qualified for special education under the primary eligibility category of multiple disabilities which included intellectual disability and autism, and therefore, contrary to available information about Student's abilities to learn Braille, concluded that Student was incapable of benefitting from more Braille instruction. Despite Student's intellectual disability, District was aware by the December 6, 2011 IEP team meeting that he had the cognitive ability and had demonstrated that he could learn and benefit from Braille instruction. At the December 6, 2011 IEP team meeting, the team concluded that Student could add, subtract and multiply<sup>6</sup> single digits and had pre-emerging Braille skills, which placed Student at the same beginning Braille reader level under which the California School for the Blind's 2007 report recommended a high level of consistent and long Braille instruction. District inappropriately substituted their eligibility categorization as determinative of the amount of Braille instruction Student should receive, 150 minutes weekly, instead of the 240 to 300 minutes weekly recommended specifically for Student by the California School for the Blind. District provided no evidentiary support justifying this arbitrary decrease.

52. Under Education Code sections 56341.1, subdivision (a) and 56352, subdivision (d), District was required to provide Braille instruction to Student by a

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<sup>6</sup> Although it was later determined at the January 22, 2013 IEP team meeting that Student was unable to multiply, and what appeared on the December 6, 2011 IEP may have been inaccurate, this was the information District had available to them to make their offer in 2011.

teacher credentialed to teach the visually impaired. At all relevant times, Ms. Gibbons was Student's credentialed visual impairment instructor. Ms. Gibbons testified that during the 2011-2012 school year, she spent 50 percent of the weekly 150 visual impairment minutes working with Student and Ms. Gomez, a non-credentialed instructional aide spent the rest of the time with Student. While under Education Code section 56351.5, subdivision (a), District may provide Braille instruction to Student using an instructional aide, that aide was required to be fluent in reading and writing grade two Braille and possess basic knowledge of Braille construction. While the evidence showed that Ms. Gomez worked under the supervision of Ms. Gibbons, there was no evidence that Ms. Gomez was fluent in reading and writing grade two Braille *and* that she possessed basic Braille construction knowledge. Since Ms. Gibbons spent 50 percent of the visual impairment minutes with Student during the 2011-2012 school year, he only received half of the 150 visual services per week, or 70 minutes. The time Ms. Gomez spent with Student did not count toward the visual impairment service time because Ms. Gomez did not have the requisite Braille fluency. Ms. Gomez was not effective in helping Student practice and reinforce Braille, his only means of obtaining literacy, if she was not fluent in writing and reading basic Braille. It was the equivalent of having an illiterate help a sighted student practice reading and writing. While Ms. Gomez may be a competent and caring paraprofessional with other subjects, she was not helpful to Student in his path toward Braille literacy.

53. Further, District's failure to expose Student to Nemeth was inappropriate and in violation of Education Code 56351.9, subdivision (b), which required District to provide Student with instruction to master Braille reading and math. It was undisputed that Nemeth was the format where all math and science materials for the visually impaired were presented. District's representation at the December 6, 2011 IEP team meeting that Student received math instruction was insufficient because it was not



Nemeth, the only way the visually impaired accessed math, beyond reading numbers set forth in literary Braille. Knowing that Student could add, subtract and multiply single digits by the December 6, 2011 IEP team meeting, should have triggered District to teach Nemeth and foster use of the Cranmer abacus. Although at hearing Dr. Sjostrom was silent on whether Student should have been taught Nemeth and use of the Cranmer abacus (beyond just making it available to Student), Ms. Vogel and Ms. Cottrell both opined that Student should have been taught Nemeth and use of the Cranmer by 2011. The Cranmer would have permitted Student to perform math involving a number greater than 10 because it operated as a calculator would. Although Student was familiar and successful using the counting tool, that tool only allowed Student to count and was not helpful in developing math skills beyond simple counting. Further, all parties agreed that Student was capable of learning Braille, and rote memory was his area of relative strength. Ms. Gibbons' explanation that because of his intellectual disability, Student would be confused from being exposed to Nemeth before learning his Braille was unsupported by any evidence. Likewise, simply having the Cranmer abacus available to Student without teaching him how to use it to develop his math skills amounted to a failure to provide instruction in math given Student's visual impairment.

54. For the same reasons that the Braille instruction District provided to Student for reading and math were inappropriate for the 2011-2012 school year as stated in Legal Conclusions 51, 52, and 53, those services were inappropriate in the 2012-2013, and 2013-2014 school years since they were the same both in quality and quantity. The only difference was that during the 2013-2014 school year Ms. Gibbons spent 80 percent of the weekly 150 visual impairment minutes working with Student, and Ms. Gomez spent the rest of the time with Student. This increase from 50 percent to 80 percent time spent with a credentialed teacher was better than in the 2011-2012

school year, but still did not comply with the requirement that any time not spent with a credentialed teacher was spent with an aide fluent in reading and writing grade two Braille and that the aide possessed basic knowledge of Braille construction. Further, during this time period, Ms. Gomez's inexperience with Braille and her provision of inadequate Braille support to Student was confirmed by Ms. Folis' May 2013 school observation of Ms. Gomez mistakenly reprimanding Student for playing with the brailler handle when he was using it properly to move to the next line. Both Ms. Folis and Ms. Vogel concluded that Ms. Gomez's visual impairment/Braille instruction were unhelpful, and of no benefit, to Student. Since Ms. Gibbons spent 80 percent of the visual impairment minutes with Student during the 2013-2014 school year, he only received 120 of the 150 visual services minutes per week. The time Ms. Gomez spent with Student did not count toward the visual impairment service time because Ms. Gomez did not have the requisite Braille fluency.

55. District argued that Student's progress on his visual impairment goals showed that the amount of services they offered was appropriate, and District attributed Student's slow progress toward the same goals to his intellectual disability instead of inadequate Braille instruction. At the January 22, 2013 IEP team meeting, it was discovered that Student could not multiply despite the IEP team's finding that he was able to do so on December 6, 2011. Therefore, either Student regressed from between December 6, 2011 to January 22, 2013, or the IEP team's measurement of Student's abilities in December 2011 was wrong. Either way, District's argument that Student progressed was not persuasive. District also argued that they provided a FAPE to meet Student's individual needs because they provided individualized brailled documents containing both un-contracted Braille and the contracted Braille that Student learned. While this was true, that aspect of individualization could not overcome the lack of FAPE triggered by the inadequate quantity of Braille instruction provided to Student, or the

use of an aide illiterate in Braille to reinforce Student's Braille skills. Although Student's intellectual disability impacted higher functioning skills, shown by his first grade reading level by January 2013, Student's rote and memorization skills were strong as shown by his learning an additional 38 Braille contractions by January 2013, and his ability to learn to play the bagpipes and ride his bike, woodwork, and perform other household chores with practice. Because of Student's intellectual disability, District discounted the quantity of Braille instruction recommended by the California School from the Blind, believing Student incapable of benefitting from more.

56. At hearing, Dr. Sjostrom opined that an increase in Braille instruction time would mean less time for Student in other classes and services. District's witnesses opined that such increase would interfere with Student's 2013-2014 goals and life skills curriculum. To the contrary, an increase in Braille instruction time would advance Student's life skills curriculum for the 2013-2014 school year, because according to the California School for the Blind, Braille was the vehicle for expanding Student's communication, and would help him acquire new skills for real-life applications. Despite the 2013 California School for the Blind assessment findings supporting that even with Student's intellectual disability his memorization and rote skills were good, District did not increase Student's Braille instruction time, and only added 30 minutes of visual impairment consulting time to his program. Although the California School for the Blind did not make a specific recommendation for the quantity of Braille instruction in its 2013 assessment, as it did in its 2007 assessment, it essentially confirmed the 2007 assessment findings that Student needed consistent Braille instruction when it concluded that Student needed Braille to build his functional skills. It also recommended that Student needed to utilize what Braille skills he had to support the acquisition of new skills and build his math vocabulary to functionally utilize math concepts for real-life applications. Since District did not provide Student with the consistent and intensive

Braille instruction recommended in 2007, District should have increased the quantity of Braille instruction to compensate for Student's intellectual disability in transitioning to the functionally focused curriculum, instead of the inappropriate graduation track curriculum, and to accelerate the Braille education necessary for acquisition of real-life applications. Because they did not do so, District also did not provide adequate Braille instruction time to Student in the 2013-2014 school year.

57. Dr. Sjostrom's opinion at hearing that Student received adequate visual impairment services was incomplete. She did not consider or specifically address the impact of Student's lack of Nemeth math and Cranmer abacus instruction, and did not specifically address Ms. Gomez's lack of Braille fluency or her function as a non-credentialed instructional aide. Ms. Metheny's opinion that Student received adequate Braille instruction and a FAPE based on Student's receipt of good grades was also incomplete because it was only one aspect of a FAPE. None of District's witnesses, including Ms. Metheny, Dr. Berry, or Ms. Gibbons, specifically addressed why the quantity of Braille instruction offered was appropriate beyond Student's intellectual disability classification, or why that classification would justify ignoring the California School for the Blind's specific recommendations for Student. Dr. Sjostrom's opinion that Student did not need the consistent Braille literacy instruction of one hour per day, four to five days weekly, recommended for beginning Braille learners was unpersuasive, especially when Student, despite his chronological age, was considered a beginning Braille learner since he only knew 45 of the 256 Braille contractions in December 2011. The opinions of Ms. Vogel and Ms. Cottrell regarding these issues were more complete and persuasive because they, like the California School for the Blind, considered Student's needs and abilities as a complete child, and did not focus solely on a segment of his disability classification as determinative to his IEP offer. In sum, Student was denied a FAPE during all regular school year time periods at issue because the

frequency and duration of the Braille instruction offered was not appropriate. The remedy for this deprivation is discussed below.

#### Orientation And Mobility

58. Student contends he did not receive adequate orientation and mobility services from a certified orientation and mobility specialist which caused him to be confused and to regress in his orientation and mobility skills. District contends that Student was properly provided with orientation and mobility instruction by a certified orientation and mobility instructor with assistance from properly trained paraprofessionals at all times.

59. During the 2011-2012 school year, District offered Student 30 minutes weekly of orientation and mobility services, and all of them were provided to Student by Ms. Chhor the certified orientation and mobility teacher and Ms. Rettig, the non-certified instructional aide working under Ms. Chhor's supervision. After Mother complained about Ms. Chhor's services in September 2011, Ms. Rettig continued to practice the routes taught by Ms. Chhor with Student throughout the school year. Although Student argued that Student did not learn any new orientation and mobility skills during the 2011-2012 school year, Student did not present persuasive evidence that learning new orientation and mobility skills was required for him to receive a FAPE. Neither of Student's experts, Ms. Cottrell or Ms. Vogel, was a certified orientation and mobility instructor, and did not opine on whether Student learned any new orientation and mobility skills during this school year, *and* whether, or how, that impacted his receipt of a FAPE. While Ms. Vogel opined that the orientation and mobility goals were vague and un-measurable, that alone constituted a procedural violation which did not result in a substantive denial of a FAPE because Student did not show that what Ms. Rettig practiced with Student was incorrect, caused Student any confusion or regression in his orientation and mobility skills, or that Student failed to benefit from practicing his

orientation and mobility skills with her. There was a gap in the evidence presented in that Student failed to show how the inappropriate goals caused any inadequacies in District's provision of orientation and mobility services during these school years. Ms. Vogel's testimony provided no link between the inappropriate goals and their impact on Student's performance of orientation and mobility skills. On the other hand, District provided evidence that Student practiced his mobility routes with Ms. Rettig under the supervision of a certified orientation and mobility instructor, Ms. Chhor, and that District provided Student all his orientation and mobility service minutes which benefitted Student and helped him make some progress. Further, although Ms. Vogel opined that the amount of orientation and mobility services offered to Student was too low as compared to that generally offered to a visual impaired student, she did not provide specific facts persuasively supporting her opinion of why the frequency and duration of services was low with regard to Student. Student did not carry his burden of persuasion that District did not provide adequate orientation and mobility services during the 2011-2012 school year.

60. During the 2012-2013 school year, District offered Student 30 minutes weekly of orientation and mobility services, the same amount, with the same two orientation and mobility goals as in the 2011-2012 school year. Although the two orientation and mobility goals were vague and un-measurable, that alone did not result in a substantive denial of FAPE because Student did not show that the orientation and mobility instruction he received was incorrect, caused him confusion or regression in his orientation and mobility skills, or that he did not benefit from practicing his orientation and mobility skills. Like the prior school year, there was a gap in the evidence presented in that Student failed to show how the inappropriate goals caused any inadequacies in District's provision of orientation and mobility services during this year. Student received orientation and mobility services of practicing his mobility routes with, at least part of

the time, Ms. Rettig and Ms. Hearon under the supervision of Mr. Casias, a certified orientation and mobility instructor. Therefore, for the same reasons that Student failed to carry his burden of persuasion that District did not provide adequate orientation and mobility services during the 2011-2012 school year applied to the 2012-2013 school year, with the exception of a brief period of approximately two months.

61. For the period from the beginning of the school year until October 31, 2012, when Mr. Casias provided his first training session to paraprofessionals who worked with Student, Student carried his burden of persuasion that District did not provide proper orientation and mobility services during the times where neither Ms. Hearon, nor Ms. Rettig were available to assist Student. As supported by Mr. Casias' October 11, 2012 e-mail, Student suffered from regression from being placed in the unfamiliar environments such as the cafeteria with untrained aides. Mr. Casias confirmed at hearing that the e-mail was prompted by information relayed to him by Ms. Hearon, and by his personal observations of multiple untrained orientation and mobility aides who confused Student by placing him in unfamiliar environments and using unfamiliar routes when moving him through the campus. Mr. Casias was credible when he opined in his October 11, 2012 e-mail that Student regressed from having to work with untrained aides. Although there was no specific evidence supporting how much orientation and mobility set back Student suffered from not having properly trained aides assist him at all times, and having inappropriate orientation and mobility goals during the period from the beginning of the 2012 school year to October 31, 2012, the evidence supported that Student regressed in this area.

62. As to the beginning of 2013-2014 school year, the evidence supported that as of May 28, 2013 Mr. Casias changed the orientation and mobility goals pursuant to the areas of deficit identified by the 2013 California School for the Blind's assessment, and refocused his orientation and mobility instructions to basic, assistive, safe travelling

skills when working with Student. Further, the evidence showed that all paraprofessionals working with Student had been adequately trained by Mr. Casias in this period. At the May 28, 2013 IEP, District decreased Student's orientation and mobility time from 30 minutes weekly to 200 minutes per year because Student did not have the intellectual ability to travel independently, needed to travel with a sighted guide and therefore did not require as much orientation and mobility services. Although Ms. Vogel opined that high school students, regardless of multiple disabilities, usually received one to two hours a week of orientation and mobility instruction, her testimony alone was not specific enough to Student, and did not carry as much weight on this issue as that of Mr. Casias, who at the time had already worked with Student for almost a year, and was a certified orientation and mobility instructor. Student did not meet his burden of persuasion that District did not provide appropriate orientation and mobility services during the 2013-2014 school year.

63. In sum, Student demonstrated that District failed to provide adequate orientation and mobility services only from the beginning of the 2012-2013 school year through October 31, 2012 because the evidence supported that Student regressed as a result of District's failure to provide trained paraprofessionals to work with Student. However, Student did not demonstrate that District failed to provide adequate orientation and mobility services in the 2011-2012, 2012-2013 (except for two months as discussed above), and 2013-2014 school years.

#### No Braille and Orientation and Mobility Instruction During The 2012 and 2013 Extended School Year

64. Student contends that he was denied a FAPE because District should have provided Braille and orientation and mobility instruction during the 2012 and 2013 extended school years because Student needed Braille instruction to obtain literacy, and needed orientation and mobility services to continue learning proper techniques to



travel safely. District contends that such services were not necessary during the summer because Student did not demonstrate a potential for regression in these areas.

65. In addition to special education instruction and services during the regular school year, extended school year services must be provided if the IEP team determines, on an individual basis, that the services are necessary for a child to receive a FAPE. (34 C.F.R. § 300.106 ; Ed. Code, § 56345, subd. (b)(3).) California Code of Regulations, Title 5, section 3043, provides that extended school year services shall be provided for each individual with unique and exceptional needs who requires special education and related services in excess of the regular academic year. Pupils to whom extended school year services must be offered under section 3043 “. . . shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil’s educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.” (See also 34 C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3).)

66. Student qualified for extended school year and attended summer school during the summer of 2012 and 2013 because District determined that such was necessary for him to avoid regression because his visual impairment and intellectual disability would continue indefinitely to impact his access to education. However, despite offering extended school year services, District did not provide any Braille instruction or orientation and mobility instruction to Student during the 2012 or 2013 extended school year. At hearing, Dr. Berry explained that such services were not provided because Student showed no likelihood of regression in these areas. The evidence did not support that the IEP team determined Student needed summer school, but decided to withhold visual impairment and orientation and mobility services

because they did not believe Student needed these services. Further, the explanation Dr. Berry provided was not documented in any of the 2011-2012, or 2012-2013 IEP's. What was documented in the May 28, 2013 IEP notes was that the vision impairment and orientation and mobility staff did not work during the extended school year. In that regard, Mother's testimony that District did not provide such services to Student during summer school because no one was available to provide them was more credible than Dr. Berry's explanation at hearing, especially since Mother's explanation was specifically corroborated by the May 28, 2013 IEP notes. Dr. Berry's subsequent explanation at hearing that the statement in the May 28, 2013 IEP that the vision impairment and orientation and mobility staff did not work during the summer was meant to convey that the particular individuals who worked with Student in those areas were not available was not persuasive given the totality of the evidence. Further, it would be irrelevant that particular individuals were not available, because irrespective of the availability of specific individuals who typically worked with Student, District had to provide appropriate personnel to work with Student on his areas of need, which included Braille and orientation and mobility instruction. These two areas of need were inextricably intertwined with Student's visual impairment and intellectual handicaps which were likely to continue indefinitely. It would be inconceivable that interruptions in these services would not impact Student's ability in attaining literacy and learning proper techniques to travel safely. District's failure to provide Braille instruction and orientation and mobility services to Student during the 2012 and 2013 extended school years was a denial of a FAPE because Student required continuous Braille instruction to continue obtaining literacy, and required uninterrupted orientation and mobility instruction from a certified orientation and mobility instructor to learn proper techniques to travel safely, in and to new environments, throughout the summer. In fact, the evidence showed that Student was required to traverse new routes in the summer

that he did not traverse during the regular school year such as travelling to the grocery store. Student needed orientation and mobility instruction to learn these new routes the right way with the help of a certified orientation and mobility instructor, which he did not receive during the summer. Student demonstrated that he was denied a FAPE by District's failure to provide Braille and orientation and mobility instruction during the extended school year in 2012 and 2013.

67. In sum, Student demonstrated that District failed to provide adequate Braille instruction by a qualified Braille instructional aide throughout the statutory period, and failed to provide adequate orientation and mobility services from the beginning of the 2012-2013 school year through October 31, 2012, and during the 2012 and 2013 extended school years. Student did not meet his burden of persuasion and failed to show that his placement, and assistive technologies were inappropriate, and that his behavioral services were inadequate during the statutory period.

## REMEDIES

68. Student prevailed partially with respect to Issues 1d and 2d in that he demonstrated that District failed to provide adequate Braille instruction by a qualified Braille instructional aide, throughout the statutory period, and failed to provide adequate orientation and mobility services from the beginning of the 2012-2013 school year through October 31, 2012, and during the 2012 and 2013 extended school years. However, Student did not prevail on the portions of Issues 1d and 2d, specifically with respect to demonstrating that District failed to provide appropriate placement, behavior support, assistive technology, and failed to provide adequate orientation and mobility services in the 2011-2012, 2012-2013 (except for the two months discussed above), and 2013-2014 school years. As a remedy, Student requests compensatory education to compensate for the services Student would have received if District properly provided

those services. District contends no remedies are appropriate because Student did not meet his burden of persuasion on any issue.

69. Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Burlington v. Department of Education* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996, 85 L.Ed. 2d 385].) In addition to reimbursement, school districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p.1496.)

70. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

71. Student requested compensatory education, in the form of instruction from certified visual impairment and orientation and mobility instructors. Student demonstrated that District failed to provide appropriate Braille instruction by a qualified Braille instructional aide, during the statutory period. Ms. Cottrell recommended a minimum of three hours a week of direct Braille instruction, not including consultation time, without specifying the end time period for the service. Ms. Vogel recommended at least one to two hours each day of Braille instruction from a certified visual impairment instructor for one year to catch-up learning the rest of the Braille contractions, and to use them consistently without lapsing back into un-contracted Braille, learning Braille rules and formatting, Nemeth math, and additional assistive technology, and utilizing all

of those skills to function as independently as possible. Student also demonstrated that District failed to provide adequate orientation and mobility services from the beginning of the 2012-2013 school year through October 31, 2012, and during the 2012 and 2013 extended school years. Ms. Vogel opined that high school students, regardless of multiple disabilities, received one to two hours per week of orientation and mobility instruction.

72. Based on the above, five hours per week of direct Braille instruction from a certified visual impairment instructor for the equivalent of one full school year, including extended school year is reasonable. The regular school year is approximately nine months, multiplied by four weeks per month yields 36 weeks, adding four weeks of extended school year yields a total of 40 weeks, multiplied by five hours per week yields 200 hours. Student is awarded a total of 200 hours of Braille instruction from a certified visual impairment instructor.

73. Based on the above, the period during which District provided inadequate orientation and mobility services, from the beginning of the 2012-2013 school year through October 31, 2012, was approximately eight weeks, adding the eight weeks from extended school years 2012 and 2013 where Student did not receive any orientation and mobility services yields a total of 16 weeks, multiplied by two hours per week yields 32 hours. Student is awarded a total of 32 hours of orientation and mobility instruction from a certified orientation and mobility instructor.

74. No evidence was provided regarding appropriate providers. However, in order to afford flexibility in providing access to these compensatory hours with minimum disruption to Student's current curriculum, District, at their discretion, may use their personnel, or a non-public agency, to administer the compensatory hours during times when school is, or is not, in session. This block of 200 hours of Braille instruction,

and 32 hours of orientation and mobility services will expire if not used by September 30, 2017, or when Student is no longer a resident of District.

## ORDER

1. Within 60 days of the date of this decision, District shall communicate to Student the schedule and provider they have chosen to provide the block of 200 hours of visual impairment, and 32 hours of orientation and mobility services, which shall be reasonably adjusted to accommodate Parents' schedule.

2. Any compensatory education time awarded by this Decision must be used by September 30, 2017, or it will be forfeited. In addition, District's obligation to provide compensatory education under this Decision will end if Student is no longer a resident of District.

3. All other requests for relief are denied.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student was the prevailing party in part as to Issues 1d, and 2d, and District was the prevailing party as to Issues 1a, 1b, 1c, 1e, 1f, 2a, 2b, 2c and 2e, and in part as to Issues 1d and 2d.

## RIGHT TO APPEAL

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

DATED: June 26, 2014

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SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings