BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT,	OAH Case No. 2013100534
STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2013110827

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on October 11, 2013, naming Oakland Unified School District. That matter was assigned OAH case number 2013100534. That case was continued for good cause on November 13, 2013.

On November 22, 2013, Student filed another complaint naming both Oakland and Tobinworld II, a nonpublic school. That matter was assigned OAH case number 2013110827. On December 9, 2013, the matters were consolidated. OAH case number 2013100534 became the primary case, and the 45-day timeline for issuing a decision is based upon the timelines in that case. On February 10, 2014, Tobinworld II was dismissed and the matter proceeded to hearing against Oakland.

Administrative Law Judge Joy Redmon heard this matter in Oakland, California, on March 25, 26, 27, and April 8, 2014.

Student's great-aunt (Great-Aunt) who is also his co-guardian and educational advocate represented Student. Student's paternal grandmother (Grandmother) who is also his co-guardian attended each day of hearing.

Melissa Phung and Alejandra Leon, Attorneys at Law, represented Oakland. John Rusk, compliance coordinator for programs for exceptional children, attended the hearing on Oakland's behalf.

At the conclusion of the hearing, the matter was continued until April 30, 2014, for the parties to submit written closing briefs. The briefs were timely received and the matter submitted for decision.

ISSUES[1]

Issue 1 – Did Oakland deny Student a free appropriate public education (FAPE) by committing the procedural violation of holding an individualized education program team meeting on May 14, 2012, without his Great-Aunt which denied her the right to meaningfully participate in the IEP process?[2]

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[1] The issues have been rephrased for clarity. Additionally, the prehearing conference order included an issue regarding a request for independent assessments in the areas of occupational therapy and assistive technology. This ALJ determined the request is more appropriately identified as a potential remedy for Issue 3 as opposed to a separate issue and it is, therefore, addressed in the remedies section and not included as a separate issue. 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.)

[2] The issues in the pre-hearing conference statement referenced "Guardians" which includes Grandmother and Great-Aunt. Although they have jointly had legal

Issue 2 – Did Oakland deny Student a FAPE by failing to provide his Great-Aunt a complete copy of Student's educational records within five business days of her requests on September 26, and December 19, 2012?[3]

Issue 3 – Did Oakland deny Student a FAPE by failing to perform assessments in the areas of occupational therapy, including sensory therapy, and assistive technology pursuant to Great-Aunt's request?

Issue 4 – Did Oakland deny Student a FAPE when it agreed to perform a psycho-educational assessment but would not agree to fund the assessment by Great-Aunt's requested assessor, Dr. Cynthia Peterson?

Issue 5 – Did Oakland deny Student a FAPE by failing to hold a 30-day placement IEP team meeting after Student's May 7, 2013, placement at Tobinworld II, a non-public school?[4]

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guardianship for Student at varying times relevant to this case, as discussed more fully below, Student's Great-Aunt and not Grandmother has held Student's educational rights since November 3, 2011. In the interest of legal accuracy and to eliminate confusion, the issues have been rephrased to reference Student's Great-Aunt and not guardians.

[3] During the pre-hearing conference, Student alleged that the initial request for records at issue in this case was made on September 19, 2012. It was clarified at hearing that the records' request was sent to Oakland on September 26, 2012. Due to the close proximity of dates, and the fax confirmation identifying the date received, this decision will consider whether or not Oakland failed to provide a complete copy of Student's educational records within five business days of the request on September 26, 2012, as opposed to September 19, 2012.

[4] This decision does not make a determination regarding whether Oakland was required to hold an IEP team meeting within 30 days of his placement at Tobinworld II

Issue 6 – Did Oakland deny Student a FAPE by failing to assess Student for Oakland's reading clinic and failing to provide reading specialist services from December 19, 2012, forward?

Issue 7 – Did Oakland deny Student a FAPE by committing a procedural violation that denied Great-Aunt the right to meaningfully participate in the IEP process at the November 6, 2013, IEP team meeting by:

a. failing to have a school site administrator at the meeting;
b. failing to have Mr. Michael Williams, who drafted a behavior plan, at the meeting; and
c. failing to have anyone at the meeting who understood the proposed behavior support plan?

Issue 8 – Did Oakland deny Student a FAPE by failing to provide adequate transportation services by:

a. picking up Student late in the morning causing Student to be late for school and miss instruction;
b. driving too fast when the van was running late;
c. extending Student's ride home in the afternoon to up to 2.5 hours; and
d. allowing Student off the van to use the restroom at a fast food restaurant;
e. playing inappropriate rock and rap music in the van when Student was present;
f. improperly supervising Student on the van resulting in Student sustaining an injury staff was not aware of; and

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for any reason other than Student's assertion that Oakland was required to hold an IEP team meeting based upon his alleged transfer to a new school district. (see 20 U.S.C. § 1414(d)(2)(C)(i)(I); Ed. Code, § 56325, subd. (a)(1).)

g. retaliatory behavior by the van drivers after issues were brought to their attention?

SUMMARY OF DECISION

This decision holds that Oakland denied Student's Great-Aunt meaningful participation in the IEP process by holding an IEP team meeting on May 14, 2012, without her or parent present, thereby denying Student a FAPE. This decision also holds that Oakland denied Student a FAPE by failing to conduct an occupational therapy and assistive technology assessment for Student after receiving consent on December 19, 2012, to conduct those assessments. The failure to conduct the assessments denied Great-Aunt meaningful participation in the IEP process and constituted a denial of FAPE. Oakland further denied Student a FAPE by failing to fund an agreed-upon independent psycho-educational evaluation with Student's requested assessor. This decision holds that Student was denied a FAPE regarding transportation from the time he began attending Tobinworld II in May 2013 until January 2014 because Oakland's contracted transportation provider consistently arrived at school 30-45 minutes late, thereby shortening Student's school day outside of the IEP process.

For the reasons stated below, Student did not prevail on the other issues raised in this case.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student is an eight-year-old boy who lives with his court appointed guardians Grandmother and Great-Aunt within the boundaries of Oakland. Student is eligible for special education with a primary disability category of emotional disturbance and a secondary category of specific learning disability.

2. Student's early life was marred by multiple traumatic events and exposure to extensive violence including the murder of his five-year-old older brother and witnessing his uncle's murder. Student was also the victim of physical and emotional abuse and neglect while living with his biological mother.

3. Grandmother and Great-Aunt, sisters who reside in the same home, had periods of unofficial custody and intermittent caretaking responsibility for Student from birth through first grade but his living situation was unstable and he was surrounded by illegal activity when with his mother. Student has lived continuously with Grandmother and Great-Aunt since September 2012 when they were appointed Student's joint legal guardians. It was not until that time that Mother relinquished physical custody.

4. In April 2011, when Student was in kindergarten, his mother appointed Great-Aunt as his "representative and advocate." On April 15, 2011, Great-Aunt faxed Oakland a letter appointing her as Student's advocate. In November 2011, when Student was in first grade, Mother formally assigned her educational decision-making authority to Great-Aunt. On November 7, 2011, Great-Aunt faxed a copy of the Assignment of Educational Decision-Making Authority to Oakland that included two telephone numbers and a post office box address for her to receive mail.

OVERVIEW OF SCHOOL HISTORY

5. During the 2011-2012 school year when Student was in kindergarten, he exhibited negative behaviors on a daily basis at school that included defiance toward adults, physical aggression toward students, tantruming, elopement, property destruction, and interrupting instruction. The principal frequently called Grandmother and Great-Aunt to come to school and help intervene and calm him down. Ultimately, Oakland shortened his attendance to half-days rather than its scheduled full-day kindergarten. Student also struggled academically and was behind his peers in all academic areas and academic readiness skills.

6. Student was found eligible for special education in April of his kindergarten year and began receiving academic support services from Danielle Simons, the resource specialist program (RSP) teacher and was assigned a one-to-one behavior aide. Student also received counseling and behavior support services on campus.

7. During the 2011-2012 and 2012-2013 school years when Student was in first and second grade, he continued to frequently exhibit negative behaviors despite having a one-to-one aide. Student made minimal progress in English language arts, was "far-below" grade level in reading, struggled with written letter and word formation or handwriting, but was approaching grade level proficiency in mathematics.

8. Student frequently displayed anger and physical aggression both in and out of school and in March 2012, Student was diagnosed with chronic post-traumatic stress disorder and reactive attachment disorder, inhibited type. Attention deficit-hyperactivity disorder and a sensory integration disorder are still being considered as possible diagnoses. According to Dr. Stephanie Rosso, Student's treating psychologist, the anger and physical aggression Student exhibits are manifestations of PTSD and reactive attachment disorder. Additionally, symptoms of inattention and hyperactivity can also be manifestations of post-traumatic stress disorder (PTSD) and reactive attachment disorder. Student also exhibits inattention and hyperactivity at home and at school but does not currently have a diagnosis of ADHD.

9. According to Dr. Rosso, PTSD and reactive attachment disorder make transitions very difficult for Student. When he is motivated to complete a task it is more likely that he can; however, it is very difficult for Student to sustain attention for long periods of time. If Student is frustrated or not able to complete a task, it triggers escalating negative behaviors.

MAY 14, 2012, IEP TEAM MEETING

10. Student's annual IEP team meeting was held on May 14, 2012. Ms. Simon, Student's RSP teacher, was responsible to mail meeting notices to schedule IEP team meetings for Student. Great-Aunt had previously notified Oakland that she held educational rights for Student. The meeting notice for the May 2012 IEP team meeting, however, was addressed and mailed to Mother and not Great-Aunt. Student's family members did not attend the IEP team meeting.

11. Great-Aunt and Grandmother had near daily contact with Ms. Simon. According to Great-Aunt, at no time prior to the meeting did Ms. Simon tell her that an IEP team meeting had been scheduled. She did not receive a telephone call, meeting notice at home, or a copy at her post office box address that was listed in the Assignment of Educational Decision-Making Authority, on file with Oakland.

12. Kara Oettinger, who at the time of the May 2012 meeting was a behaviorist in Oakland, overheard Theresa Miller the program specialist assigned to Student's case, confirm the meeting telephonically with Student's biological mother. According to Ms. Oettinger, Student's mother said that she would attend the meeting. Ms. Oettinger attended the IEP team meeting. She said that the IEP team decided to proceed with the meeting without Mother or Great-Aunt present because they had reached out with three attempts to schedule the meeting (written meeting notice, telephone message, telephone contact with Mother) and Student's annual IEP was due. No one attempted to contact Student's family members during the meeting to find out why they were not present or to reschedule the meeting, despite the fact that none of them had indicated that they were refusing to attend the scheduled IEP team meeting. No attempt was made to reschedule the meeting to a date and time when Great-Aunt was able to attend.

SCHOOL RECORDS

13. Great-Aunt faxed a written request to Oakland on September 26, 2012, asking for a copy of Student's educational records. Great-Aunt indicated she held Student's educational rights but did not submit another copy of her educational decision making authority with this request.

14. John Rusk, Oakland's compliance officer is also designated as Oakland's custodian of records. He testified credibly and without reservation that after receiving a written request for records, it is Oakland's policy that the records clerk makes a copy of the records and then notifies the requestor that the records are available to be picked up. After making contact with the requestor, the records clerk places a note on the original request indicating that the records were copied and the date the clerk called informing the requestor that the records are available. In this case, consistent with Oakland's policy, the note indicates the call was made on September 28, 2012. Prior to releasing the records, Oakland confirms that the person picking up the records has authority to receive them.

15. Great-Aunt testified that she did not receive a copy of the records and no one from Oakland contacted her by telephone or in writing regarding her request. Her testimony on this point was not credible. On October 3, 2012, Great-Aunt faxed another letter to Oakland that included a copy of the assignment of educational rights and also a statement saying, "per my conversation, I should not have to come in and pick up these files." This statement is clearly a response to being informed by Oakland that she needed to pick up the records as opposed to having them mailed and that she needed to show that she had the authority to receive them.

16. It is determined that Oakland made a copy of Student's records available to Student on September 28, 2012. No one picked up Student's records from Oakland.

17. At an IEP team meeting on December 19, 2012, Great-Aunt again requested that a copy of records be sent to her. Oakland program specialist Richard Friedman attended the meeting. He recalls informing Great-Aunt during the meeting that he was previously asked by someone from Oakland's program for exceptional children's department to bring a copy of Student's cumulative record from the school site to be copied which he had done. This is how Mr. Friedman knew that Student's cumulative record had been delivered to Oakland's office to be copied. During the IEP team meeting, he explained Oakland's release process to Great-Aunt and informed her that a copy of the records was available to be picked up.

18. It is determined that Oakland copied Student's records, including his cumulative file, and made them available to Great-Aunt within five business days of her September 26, 2012, request. A copy of the file remained at the office available to be picked up but was not mailed to her.

OCCUPATIONAL THERAPY AND ASSISTIVE TECHNOLOGY ASSESSMENTS

19. At IEP team meeting held on May 3, 2011, and again in September 2011, Great-Aunt requested that occupational therapy and assistive technology assessments be conducted for Student. She did not receive a response to these requests.

20. During an IEP team meeting on December 19, 2012, she again requested occupational therapy and assistive technology assessments and also requested that Oakland conduct an educationally related mental health assessment for Student.

21. Great-Aunt testified that at the conclusion of the meeting, Mr. Friedman provided her with all three assessment plans. She said she signed them in Ms. Simon's RSP room where the meeting was held and gave them back to Ms. Simon on the day of the IEP team meeting. Oakland asserts that it did not receive a signed copy of the occupational therapy and assistive technology assessment plans, but did receive a signed copy of the educationally related mental health assessment plan.

22. Mr. Rusk explained that when consent for an assessment is returned, the Oakland employee receiving the plan completes the box marked "For District Use Only" inserting the date the document was returned to track the timelines. This box is blank on the occupational therapy and assistive technology assessment plans but is filled in for the educationally related mental health assessment plan.

23. Great-Aunt's conduct both before and after requesting the assessments is consistent with her testimony and was more persuasive than Oakland's witnesses on this point. Great-Aunt had requested these specific assessments on at least two prior occasions. There is no dispute that Mr. Friedman gave her the plans at the conclusion of the IEP team meeting and that immediately thereafter, she signed the assessment plan for the educationally related mental health assessment and provided it to Ms. Simon. In light of the forgoing, it is determined that Great-Aunt also signed and returned to Ms. Simon the assessment plan for the occupational therapy and assistive technology assessments on December 19, 2012, authorizing Oakland to conduct the assessments. Even had Great-Aunt not returned signed assessment plans, no one from Oakland ever followed up with Great-Aunt to see why she did not provide consent. Had they timely inquired about the status of consent, Oakland would have been alerted to Great-Aunt's assertion that she had returned the plans and her ongoing desire to have the assessments conducted.

24. After the December 19, 2012, IEP team meeting, Great-Aunt continued to request occupational therapy and assistive technology assessments at various times including during an IEP team meeting on November 6, 2013, and in a parent addendum submitted following that meeting. This shows that Great-Aunt had not abandoned her pursuit of these assessments. Student's IEP team agreed to move up his triennial assessment that would have otherwise been due in May 2014. The assessment plan proposed to conduct assessments in occupational therapy and assistive technology.

Great-Aunt signed the assessment plans following the IEP team meeting on November 6, 2013; however, at the time of hearing no evidence was presented that the assessments had been conducted.

INDEPENDENT PSYCHO-EDUCATIONAL ASSESSMENT

25. Great-Aunt requested an independent psycho-educational assessment of Student to be performed at public expense. On May 25, 2011, Oakland agreed to fund the assessment. Great-Aunt requested that the assessment be conducted by Dr. Cynthia Peterson, of Oakland.

26. Thereafter, Oakland informed Great-Aunt that it refused to accept Dr. Peterson as the assessor because based upon its previous experience, Oakland found her contractual practices to be impractical for its interpretation of the requirement that assessments be conducted without undue delay. Mr. Rusk explained that the specific practices Oakland found objectionable were Dr. Peterson's requirement that she be paid before she releases a report to Oakland and that in previous assessments she failed to have the report drafted timely. Oakland keeps a list of "approved assessors."[5] Oakland removed Dr. Peterson from their list of approved assessors but did not dispute Dr. Peterson's professional qualifications as an examiner. No one from Oakland contacted Dr. Peterson in response to this student's request to see whether or not she maintained those practices and, if so, whether she would agree to waive them in this case.

27. Oakland gave Great-Aunt a list of other "approved" assessors from which to choose. In October 2011, in an attempt to overcome the impasse, Oakland submitted a request for assessment to the Department of Education's Diagnostic Center of

[5] No findings are made in this decision regarding whether or not Oakland's approved list meets legal requirements because that issue was outside the scope of this hearing.

Northern California. In November 2011, however, a dispute arose regarding the proposed assessment, and Great-Aunt informed Oakland that the Diagnostic Center was not accepted as the IEE provider.

28. Over the course of the years following the agreement to fund an independent psycho-educational assessment, Great-Aunt spoke with other potential assessors, but maintained her position that she wanted the assessment completed by Dr. Peterson and did not request any assessor other than Dr. Peterson.

29. It is determined that the decision to reject Dr. Peterson as an assessor was based upon Oakland's prior experience with her and not because of her qualifications or contractual practices regarding an assessment for Student. To date, Oakland has not funded an independent psycho-educational assessment for Student.

STUDENT'S READING ABILITY AND READING SPECIALIST SERVICES, AND OAKLAND'S IEP OFFERS FROM DECEMBER 19, 2012, THROUGH MARCH 14, 2013.

30. On May 14, 2012, at the end of Student's first grade year, the IEP team met to develop Student's annual IEP. At that time, Student's ability to acquire academic skills, particularly in language arts, including reading and written language, were impacted by his frequent negative behaviors and remained areas of need for Student. To address those needs, the IEP contained goals in the area of reading decoding and fluency, reading comprehension, and written language. The IEP also contained accommodations for Student in general education and on State tests including extended time, testing in small groups, and tests to be administered at time most beneficial to Student. To implement Student's goals, his IEP called for placement in a general education setting with a one-to-one behavior aide, and RSP services that included three 30 minute sessions weekly of pull-out services and four 30 minute push in services per week to be delivered in Student's general education classroom. The RSP services included

addressing his language arts needs. Great-Aunt consented to the IEP and it was implemented.

31. Great-Aunt requested another IEP team meeting to have Dr. Rosso present the findings of a psychological and academic assessment that had been conducted by the Children's Hospital and Research Center in Oakland. An IEP team meeting was held on December 19, 2012. Dr. Rosso informed the team that Student had been diagnosed with PTSD and reactive attachment disorder. She explained how Student manifests the symptoms of those conditions. Additionally, Dr. Rosso informed the team about the academic component of the assessment conducted at Oakland Children's Hospital. As part of this assessment Student was given the Woodcock-Johnson III (WJ-III) a test device designed to measure academic functioning. In assessing Student's reading level, Dr. Rosso's colleague compared the standard score of 88 that Student received on the WJ-III's letter-word identification subtest in April 2011 with his score of 102 on the same subtest in December 2012. She concluded that although as a second grader he was reading at the first grade level, the test results demonstrated significant academic improvement and indicated that Student has the capacity to learn to read. Student had made academic progress in reading from May 2012 to December 2012; however, his behavior continued to significantly impede his ability to access the general education curriculum. During the meeting, Oakland amended Student's IEP and offered placement in a self-contained special day class with the continued support of a one-to-one aide. Great-Aunt did not consent to the special day class and requested that Student be assessed for Oakland's reading clinic. The IEP team agreed to reconvene to discuss the impending results of an educationally related mental health assessment that was underway as well as the results of the screening for Oakland's reading clinic.

32. It is determined that language arts, including reading and writing, were areas of need for Student. The reading and writing goals contained in the May 14, 2012,

IEP were based upon Student's then present levels of performance, were measurable, and addressed these areas of need. Between May and December 2012, Student made academic progress; however, his negative behaviors persisted and prevented him from accessing the general education curriculum and reaching his potential as described by Dr. Rosso.

33. Student's goals and reading support remained the same pursuant to the December 19, 2012, IEP; however, Oakland's placement offer changed to a special day class. Student did not show that his goals, support services, or placement from the December 19, 2012, IEP were not appropriate. Rather Student asserted only that he required Oakland's reading clinic, or the additional services of a reading specialist to receive a FAPE. The evidence does not support Student's assertion. The December 19, 2012, offer to move Student to a special day class with a lower student-to-teacher ratio and the continued support of a one-to-one aide, was designed to meet Student's needs and was reasonably calculated to provide educational benefit. Additionally, for the reasons stated below, Oakland's reading clinic was not appropriate for Student, nor was evidence presented that he required other reading specialist services.

34. Oakland's reading clinic is a short-term reading intervention program. The program is modeled after the Lindamood-Bell reading comprehension program. It is located on one school campus in Oakland during the regular school day. Students are bussed from their school of attendance to the site where the program is held and bussed back to their school at the end of the session.

35. Students enrolled in the clinic are paired up with one other student and receive direct one-to-two instruction for an intensive two or four hour session per day. The length of the intervention program depends upon the needs of the child and the individual success he or she experiences while in the program. Due to the intense nature of the program, all students that are referred to the reading clinic undergo an initial

screening process to review whether or not the program is appropriate for the student. Some factors that are considered in the screening process include the child's attendance, ability to sustain attention for long periods of time in an intense program, and their behavior.

36. Following the December 19, 2012, IEP team meeting, Student's RSP teacher sent his information to the reading clinic and asked that he be screened. In February 2012 the director of the reading clinic informed Student that he was not accepted into the program. The reasons included his attendance (listed at 85%) and his documented history of negative behaviors. Student was also rejected from the program due to his documented history of transitions within the school day as a trigger for negative behaviors and the nature of the program included multiple transitions. The letter misstated Student's attendance, as it was above 95% at the time of the referral.

37. The goals, services, and placement contained in Oakland's May 14, 2012, IEP and its December 19, 2012, addendum offer of special day class placement offered Student a FAPE in the area of reading and, as such, Student did not need to be assessed by or placed at the Oakland reading clinic to receive a FAPE. It is further determined that even had Student's attendance been accurately reported in the screening process, Oakland's reading clinic would not have been appropriate for Student because of the intense nature of the program and the frequent daily transitions. There was also no evidence that Student needed the additional services of a reading specialist as he received educational benefit from the reading services he was provided.

STUDENT'S READING NEEDS; OAKLAND'S MARCH 15, 2013 IEP OFFER

38. Student's IEP team reconvened on March 15, 2013, to discuss the results of the educationally related mental health assessment and Oakland reading clinic's determination to reject Student. During that meeting, the IEP team again discussed Student's intense behavior needs. Oakland offered to place Student at a non-public

school with round- trip transportation. Great-Aunt continued to request Oakland's reading clinic, but accepted the offer of a non-public school subject to locating one that both Oakland and she could agree upon. No evidence was presented indicating that Student's reading needs changed from December 19, 2012, through March 15, 2013. At the time of the IEP team meeting, he had made educational progress toward meeting his reading and writing goals and did not need the Oakland clinic or additional reading specialist services to receive a FAPE.

STUDENT'S PLACEMENT AT TOBINWORLD II AND READING SERVICES FROM NOVEMBER 6, 2013, THROUGH HEARING.

39. Student began attending Tobinworld II on May 7, 2013. Tobinworld II is a nonpublic school for children and young adults with behavior problems. Student is a resident of Oakland and Tobinworld II is located in Antioch. Despite Tobinworld II's location in Antioch, Oakland has continued to be responsible to provide Student special education and related services. Student did not transfer to another school district.

40. Oakland held Student's annual IEP team meeting on November 6, 2013, when Student was in the third grade.[6] At that meeting, Oakland proposed reading goals in the area of decoding and fluency, reading comprehension, and written language specifically regarding sentence construction. The IEP called for continued placement at Tobinworld II. Student presented no evidence that the proposed goals, services, and placement offered in the November 6, 2013, IEP were not designed to meet his unique needs or reasonably calculated to provide educational benefit. Student continues to assert that the flaw in the IEP was that it did not offer reading specialist services. There was no evidence presented that Student's needs changed requiring reading specialist

[6] An IEP team meeting was also held on October 24, 2013, where transportation was discussed but no changes relevant to this case were made to the IEP.

services or that he could not make academic progress in reading with the program proposed by Oakland in the November 6, 2013, IEP.

41. There is a fundamental disagreement among the Oakland members of Student's IEP team (including participants from Tobinworld II) and his family members regarding Student's past and current reading level. Great-Aunt, Grandmother, and Student's father contend that upon entering Tobinworld II and continuing until the time of hearing Student reads at a kindergarten level. This belief is based on their personal observation of how Student reads as compared to the reading ability of his younger sister who reads better than Student. None of them have teaching credentials or specialized training in reading instruction. This assertion was contradicted by Student's teacher at Tobinworld II, Ms. Teresa Turner. This factual discrepancy must be resolved before a finding can be made regarding the appropriateness of Oakland's November 6, 2013, IEP regarding language arts, including reading and written language.

42. Ms. Turner, Student's teacher at Tobinworld II, testified that when Student entered her class in May 2013 he read at approximately a kindergarten to early first grade level. Over the course of the following nine months, however, he progressed significantly in reading and currently is reading at approximately a second to early third grade level. The rapid improvement in Student's reading is due, in part, to Tobinworld II's structure and how positively Student has responded to the behavior model of the school.

43. The class size at Tobinworld II is limited to 12 students and each class is staffed by a teacher and classroom aides. Student was assigned to Ms. Turner's combined first through fifth grade class.

44. Tobinworld II uses a school-wide highly incentivized reward based behavior model. For example, students earn tickets throughout the day for exhibiting desirable behavior and completing academic work. Each afternoon the students are then

able to exchange tickets for items including candy, popcorn, ice cream, or activities including playing video games, pin ball, and air hockey. Students can also save their tickets to earn larger items.

45. Student responded well to the incentives at Tobinworld II and began exhibiting more appropriate classroom and playground behavior. His negative behaviors occurred far less often than in traditional public school in Oakland. Student also began to develop appropriate peer relationships. As a result of the improved behavior, Student began to make more rapid academic progress in all subject areas, including language arts.

46. Ms. Turner earned her special education teaching credential in 2009. Prior to teaching at Tobinworld II, Ms. Turner taught special education in Mt. Diablo and was also a substitute teacher for three years. She teaches multiple subjects including reading. She taught Student continuously from May 2013 until February 2014. She was a credible witness who is an experienced special education teacher knowledgeable about Student and his academic skills and progress. Additionally, her testimony of Student's reading level both upon entering her class in May of 2013 through the present is corroborated by standardized testing.

47. As noted previously, on the WJ-III's letter-word identification subtest, Student received a score of 102 in December 2012. Student was again assessed using the WJ-III in March 2014 by Tobinworld's IEP coordinator Gabriel Aguilar. On this measure, he earned a standard score of 110 on the letter-word identification subtest, which is within the average to high-average range. Additionally, he achieved a broad reading standard score of 103, putting his grade equivalent at third grade-fifth month.

48. The standardized reading scores discussed above are not a comprehensive measure of Student's reading level. They do, however, corroborate Ms. Turner's reports of Student's past and current reading level. Her testimony on this point was more

persuasive due to her education, training, and experience than the unsupported observations of Student's family members. This acquisition of reading skill is also consistent with Dr. Rosso's description of the impact of PTSD and reactive attachment disorder. According to Dr. Rosso, when Student is in a situation where he experiences high frustration and failure, it makes it difficult for him to acquire and retain information. By all accounts, Student responded very well to the behavior supports at Tobinworld II thereby decreasing his negative behaviors. As was noted by Dr. Rosso, Student always had the capacity to learn. The highly structured and reward-earning environment at Tobinworld II has proven to be a key factor in Student's ability to develop reading skills.

49. It is determined that the November 6, 2013, IEP was designed to meet Student's unique reading and written language needs and was reasonably calculated to provide educational benefit. Moreover, from the time it was implemented in November 2013 through the time Student was unilaterally removed from Tobinworld II in February 2014, Student received educational benefit in reading and written language. Therefore, at no time from December 19, 2012, through the due process hearing did Student need either the Oakland reading clinic or reading specialist services to receive a FAPE.

PARTICIPANTS AT THE NOVEMBER 6, 2013, IEP TEAM MEETING

50. Great-Aunt, Grandmother, Teresa Turner (Student's classroom teacher), Holly McCarthy (IEP chairperson), Ursula Reed (Oakland's representative and administrative designee), and Gabriel Aguilar (newly hired and in training to replace Ms. McCarthy) attended the November 6, 2013, IEP team meeting. Tobinworld II's principal, Sarah Forghani had a conflict and asked Ms. McCarthy to attend in her place.

51. Ms. McCarthy was Tobinworld II's IEP coordinator and a member of the administration of the school. Ms. McCarthy was knowledgeable about Tobinworld II's program, classrooms, academic, and non-academic offerings.

52. Ms. Reed, Oakland's special education coordinator for nonpublic schools, attended the IEP team meeting on Oakland's behalf. Ms. Reed has worked in Oakland continuously since 1989, serving as a speech pathologist, a middle school principal, and in district administration in human resources and special education. She is knowledgeable about the resources available to special education students in Oakland as well as those attending nonpublic schools when placed pursuant to an IEP by Oakland.

53. Mr. Williams, another Tobinworld II administrator, drafted Student's positive behavior support plan but did not attend the IEP team meeting during which it was presented. Mr. Williams met with Ms. McCarthy prior to the IEP team meeting and went over the plan with her. Ms. McCarthy presented the plan at the meeting. As noted above, Tobinworld II's entire school is structured around a specific behavior intervention model. Mr. Williams drafts the behavior support plans for most students. He develops the plans using data that is collected by the classroom teacher and aides. The classroom teachers at Tobinworld II receive specialized training on data collection as it is a foundational component of the school's overall program.

54. Ms. Turner attended the IEP team meeting and had collected the data regarding Student's behavior that formed the basis for the behavior support plan drafted by Mr. Williams. Ms. Turner was the person who was responsible for implementing the plan. It is determined that even though Ms. Turner did not formally present the behavior support plan during the meeting, she was knowledgeable about the data that formed the basis for the plan, was familiar with Student's behaviors, understood the plan, and was able to answer questions about the behavior support plan.

STUDENT'S TRANSPORTATION TO AND FROM TOBINWORLD II

55. From the time Student was enrolled at Tobinworld II through approximately January 2014, round-trip transportation between Student's home and school was provided by Tobinworld II's vans, pursuant to Student's IEP. Tobinworld II's school day commences at 8:30 a.m.; however, the vans frequently ran late and Student consistently arrived at school between 9:00 and 9:15 a.m. along with other students living in Oakland. During that time, Student's classmates did calendaring, journal writing, and ate breakfast. When Student arrived, he was permitted to eat breakfast.

56. Although, Ms. Turner testified that she structured her day such that Student did not miss instructional time due to his frequent late arrival, this testimony was not persuasive. Student has social emotional needs that included developing positive peer interactions. Student has needs in the area of handwriting and written expression. It is determined, therefore, that both eating breakfast with peers and writing in a journal are instructional activities that would have addressed, in part, Student's identified areas of need.

57. Great-Aunt raised several other allegations regarding transportation including: that on two occasions they followed the van and determined the driver was driving too fast; that due to traffic Student's ride home was long and up to 2.5 hours on one occasion; that on one occasion the van driver stopped to permit Student to use the bathroom at a fast-food restaurant because Student reported he could not wait until he got home to use the restroom; that, until they complained to the school, the van driver played radio stations that broadcast rock and rap music; that on one occasion Student and a peer played a game that resulted in both boys having scratches on their hands; and that after Student's Grandmother reported the scratches to the school the van drivers made comments to Student that his Grandmother considered retaliatory.

58. After each of the above incidents, Great-Aunt or Grandmother informed the school about their concerns. They also reported the incident to the police where Student and another child scratched each other's hands while playing a game on the bus. The police investigated that incident but took no action. Tobinworld II's administrators, Ms. Forghani and Mr. Williams, when Ms. Forghani was on maternity leave, investigated each incident. They reported speaking to the van drivers and reminding them of their obligation to drive responsibly and play appropriate music. Regarding the stop at the fast-food restaurant, the investigation revealed that Student repeatedly stated he could not wait until returning home to use the bathroom. The van driver went into the restroom first to make sure it was empty, then stayed outside of the bathroom but kept the door slightly ajar with his foot while Student used the bathroom. They then immediately returned to the van and Student was driven home. Student's Grandmother informed the school that she would rather they have Student urinate in his pants on the van than be taken to a public restroom.

59. Each incident described above, with the exception of the van's arrival time, was an isolated or infrequent incident. These were investigated and addressed by Tobinworld II's administrators. As discussed below, these incidents, alone or taken together, did not result in a denial of FAPE.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA[7]

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a)

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[7] Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

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

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

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

benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.,*, at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code,§§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3) (C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student has the burden of proof.

PROCEDURAL COMPLIANCE

5. Under the IDEA, in cases alleging a procedural violation, an ALJ may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or deprived the Student educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii).) California has enacted a similar statute that prohibits an ALJ from basing a decision solely on non-substantive procedural errors, unless the ALJ finds that those errors resulted in a loss of educational opportunity to the pupil or interfered with the parent or guardian's right to participate in the process of formulating the IEP. (Ed. Code, § 56505 subd. (j).)

6. Procedural inadequacies that result in a loss of educational opportunity or seriously infringe on parents' opportunity to participate in the IEP formulation process clearly result in a denial of FAPE. (*Shapiro v. Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078; see also *Amanda J. v. Clark County School Dist.,* (9th Cir. 2001) 267 F.3d 877, 892.) "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v.Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994].)

Issue 1 – IEP Team Meeting on May 14, 2012, without Great-Aunt Present

7. Federal and state law require that parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provisions of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group making decisions on the educational placement of the student. (Ed. Code, § 56342.5.) An IEP team meeting may be conducted without a parent or guardian in attendance if the local educational agency is unable to convince the parent or guardian that he or she should attend. (Ed. Code, § 56341.5 subd. (h).) The definition of parent includes a person, like Great-Aunt, who is authorized to make educational decisions for the child. (34 C.F.R. § 300.30(a)(3); Ed. Code, § 56028 subd. (a)(3).)

8. Oakland argues that had it not proceeded with the May 14, 2012, IEP team meeting it would have rendered Student's annual IEP late. The court in *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, concluded that "[w]hen confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in a denial of a FAPE. In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination." (Id at p. 1046.) In that case the court concluded

that the decision to prioritize strict deadline compliance over parental participation was clearly not reasonable. (Ibid). Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J.*, *supra*, at p. 882.)

9. Oakland argues that Great-Aunt and Grandmother were not appointed Student's legal guardians until after the May 14, 2012, IEP team meeting and, therefore it was not legally obligated to provide them notice of the meeting. Oakland further argues that it was required to invite Student's mother, which it did, and that Oakland proceeded with the IEP team meeting in her absence so that it could remain compliant with Student's annual review timelines. These arguments fail.

10. Oakland was not obligated to invite Great-Aunt to the IEP team meeting because she had unofficial caretaking responsibilities for him or because she was previously appointed as his advocate. Rather, Oakland was required to invite Great-Aunt because, in November 2011, Mother executed and provided Oakland a written assignment of educational decision-making authority that specifically included the authority to attend IEP team meetings and sign IEP documents with the same legal effect and authority as Mother would have absent the assignment. Oakland did not dispute the authenticity or validity of the assignment. Therefore, Oakland was obligated to invite Great-Aunt to the May 14, 2012, IEP team meeting and failed to do so.

11. Even had Oakland been correct that it needed to invite only Mother to the IEP team meeting, Oakland proceeded with the meeting in her absence as well. Student's mother confirmed by telephone that she would attend. When she did not, no one from the IEP team made any attempt to contact her to see why she was not at the meeting. Education Code section 56341.5 (h) authorizes a local education agency to move forward with an IEP team meeting without a parent or guardian but only if the agency, "is unable to convince the parent or guardian that he or she should attend." In this case, rather than refusing to attend, Student's mother confirmed she would attend.

Moreover, Great-Aunt and Grandmother were in almost daily contact with Student's RSP teacher, yet no one from Oakland attempted to reschedule the meeting when Student's family failed to appear at the IEP team meeting.

12. Oakland also argues that it had to proceed with the IEP team meeting without a parent because it needed to comply with annual meeting timelines. This argument also fails. Consistent with the law set forth in *Doug C. v. Hawaii*, *supra,* even if rescheduling the IEP team meeting to ensure that Great-Aunt or Mother was present may have made the annual IEP team meeting late, that violation would not have been nearly as significant as moving forward without any of Student's family members present.

13. Oakland committed a procedural violation by holding the IEP team meeting without the proper team members. Oakland significantly impeded the opportunity for parental participation in the decision-making process regarding the provision of a FAPE to Student when it held the May 2012 IEP team meeting without Student's Great-Aunt or his mother present. This denied Student a FAPE.

Issue 2- Student's Educational Records

14. Student asserts that Great-Aunt requested a copy of his school records, including his cumulative folder, be mailed to her on both September 26, 2012, and December 19, 2012, and that Oakland did not mail the records. Oakland asserts that it timely responded to Geat-Aunt's request by copying his records and making them available for her to pick up at Oakland's office upon showing proper identification to receive the records.

15. California Education Code section 56504 states in relevant part that, "[t]he parent shall have the right and opportunity to examine all school records of his or her child and to receive copies…within five business days after the request is made by the parent, either orally or in writing." The Family Educational Rights and Privacy Act,

commonly referred to as FERPA, protects the privacy of student education records and imposes restrictions on who has the authority to receive student records. (42 U.S.C. § 1232 et seq.)

16. The question here turns not on whether the District timely copied the records, as it did so within five business days of the request, but on whether Oakland was required to mail a copy to Great-Aunt or if making them available for pick up at Oakland's office complies with the law. California Education Code section 56504 requires that the parent have an opportunity to receive the records within five business days of the request. It does not impose an obligation to mail the records to the parent. Moreover, Oakland's requirement that the person receiving the records show identification and demonstrate they have the legal right to receive the records is consistent with the protections imposed by FERPA.

17. In this case, Oakland timely responded to the initial request by copying the records and notifying Great-Aunt that the records were available for her to retrieve at its office and by reconfirming that the records remained available for her to retrieve in response to her second request. As Oakland made the records available in its office within five business days of her two requests, Oakland did not deny Student a FAPE by failing to timely provide Student's educational records.

Issue 3- Occupational Therapy and Assistive Technology Assessments

18. There is no dispute that Great-Aunt made multiple requests for Oakland to conduct occupational therapy and assistive technology assessments and that assessment plans for both were provided to her at the conclusion of the December 19, 2012, IEP team meeting. Oakland asserts that it never received copies of the signed assessment plans and, therefore, it was not authorized to conduct the assessments. Additionally, Oakland argues that despite providing the assessment plans, it did not have sufficient information to determine that Student required an occupational therapy

and assistive technology assessment as of December 2012 to gain educational benefit. Therefore, he was not denied a FAPE. These arguments fail.

19. Pursuant to Education Code section 56043 (f)(1), an IEP team meeting is required to be held as a result of the assessment within a total time not to exceed 60 calendar days from the date the assessment plan is signed, not counting days between Student's regular school sessions, terms, or days of school vacation in excess of five school days. As noted above, "related services" are developmental, corrective, and supportive services as may be required to assist the child in benefiting from special education, and can include occupational therapy and assistive technology. After a child is deemed eligible for special education, reassessments must 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)(2).)

20. The weight of the evidence supports a finding that Great-Aunt signed the assessment plans after the IEP team meeting on December 19, 2012, and gave them back to Student's RSP teacher, thereby starting the timeline for Oakland to conduct the assessments. Therefore, it is determined that Oakland failed to conduct these assessments pursuant to a signed assessment plan that constitutes a denial of FAPE.

21. In this case, even assuming *arguendo* that signed assessment plans were not returned, no one from Oakland ever followed up with Great-Aunt regarding the outstanding assessment plans. Oakland was on notice that Great-Aunt had requested assessments in these areas. Had Oakland believed that Great-Aunt was given the assessment plans but failed to give consent, Oakland's obligation in this case, included at a minimum following up with Great-Aunt to find out why she had not provided consent. Additionally, Great-Aunt renewed the request on multiple other occasions following the December 2012 IEP team meeting (including twice in November 2013).

Oakland committed a procedural violation of the IDEA and State law by not completing these assessments in the statutory time frame.

22. Oakland correctly contends that there was no evidence that its delay in providing Student's occupational therapy and assistive technology assessments denied Student educational benefit, but Oakland does not address the impact of the delay on the Great-Aunt's participatory rights. Great-Aunt and Grandmother have attended at least four IEP team meetings since the assessment plans were provided in December 2012. Had Oakland timely conducted the requested assessments, the results would have been available to Great-Aunt and Grandmother during these IEP team meetings and would have assisted them in discussing Student's program and placement for the remainder of first grade, and his second and third grade school years. The delay deprived Great-Aunt, Grandmother, and the rest of his IEP team of potentially useful information concerning Student's disabilities and educational needs during the foundational academic years of first through third grade. This constituted a significant impediment to Great-Aunt's participation in the decision making process regarding Student's program, and therefore, constitutes a denial of FAPE from approximately March 2012, when the IEP team meeting to discuss assessment results was due, through the time of hearing for failing to conduct the consented to assessments.

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Issue 4 – Independent Psycho-Educational Evaluation

23. In May 2011 Oakland agreed to fund an independent psycho-educational assessment of Student but denied Student's preferred assessor, Dr. Cynthia Peterson, because Oakland objects to her contractual practices. Oakland did not contact Dr. Peterson regarding Student's request. Other than contacting the Diagnostic Center in October 2011, Oakland's attempt to ensure an IEE be conducted has been essentially

limited to providing its list of approved assessors, and stating that alternatives to Dr. Peterson will be considered.

24. When a student requests an independent educational evaluation (IEE), the public agency must, without unnecessary delay, either file a request for a due process hearing to show that its assessment is appropriate or ensure than an IEE is provided at public expense. (34 C.F.R. § 300.502(b)(2); (b)(2)(i), (ii); see Ed. Code, § 56329, subd. (c).)

25. Whether a district's delay is unnecessary within the meaning of the above regulation is a fact-specific inquiry. Many decisions have found delays shorter than the delay in this matter unnecessary. In *Pajaro Valley Unified School Dist. v. J.S.* (N.D. Cal. Dec. 15, 2006, C06-0380 PVT) 2006 WL 3734289, p. 3*,* for example, the court determined that the school district unnecessarily delayed filing its due process request because it waited almost three months to do so. (See also *Taylor v. District of Columbia* (D.D.C. 2011) 770 F.Supp.2d 105, 107-108, 111[four month delay unnecessary]; *Student v. Temecula Valley Unified School Dist.* (OAH, Jan. 14, 2013, No. 2012020458 [four- and-one-half month delay unnecessary]; *Student v. Los Angeles Unified School Dist.* (OAH, Dec. 14, 2012, No. 2012090139 [70 day delay unnecessary]; *Student v. Los Angeles Unified School Dist.* (OAH, July 7, 2011, No. 2011020188) [90-day delay unnecessary]; *Lafayette School Dist. v. Student* (OAH, July 1, 2009, No. 2008120161)[74-day delay unnecessary]; *Fremont Unified School Dist. v. Student* (OAH, June 1, 2009, No. 2009040633) [four month delay unnecessary]; *Student v. Los Angeles Unified School Dist*. (OAH, June 20, 2007, No. 2006120420 [64-day delay unnecessary]; *cf. H.S. v. San Jose Unified School Dist.* (N.D.Cal. May 6, 2013, No. C 12–06358 SI) 2013 WL 1891398, pp. 2-4 [seven month delay unnecessary].)

26. When a district can document good faith efforts to resolve a dispute over an IEE, some delay has been found reasonable. In *L.S. v. Abington School Dist*. (E.D. Pa. Sept. 28, 2007, No. 06-5172) 2007 WL 2851268, p. 9, the court held that a school

district's ten-week delay in filing a due process request was not a per se violation of the IDEA. The court emphasized that there was evidence of ongoing efforts during that time to resolve the matter, including numerous emails and holding a resolution session, and that the district, within 27 days of the request, told parents orally that the request would be denied. (*Ibid.*) Similarly, in *J.P. v. Ripon Unified School Dist.* (E.D.Cal. April 14, 2009, No. 2: 07-cv-02084–MCE–DAD) 2009 WL 1034993, pp. 7-8, the court found that a delay of over two months was not unreasonable, because the district was able to produce a series of letters showing its attempts to resolve the matter with parents, and because a final impasse was not reached until three weeks before the district filed for a due process hearing.

27. The cases that excuse a district's delay in filing for due process or providing an IEE universally involve ongoing attempts by the parties to reach an agreement either among themselves or with the requested assessor. In this case, after 2011, there was no ongoing negotiation with either Great-Aunt or the preferred provider. Rather, Oakland denied the requested provider in 2011, offered a few alternative assessors, and has taken no affirmative action to reach an agreement regarding an assessor for over two and a half years.

28. Oakland argues that its conduct was reasonable here because it immediately notified Great-Aunt that it was rejecting Student's preferred assessor and gave her a list of alternatives. The law, however, requires promptness and accomplishment.

29. The regulation governing independent assessments requires that the district "ensure" that the IEE is provided without unnecessary delay. (34 C.F.R. § 500.502(b).) The plain and ordinary meaning of "ensure" is "make certain that (something) shall occur or be the case . . . make certain of obtaining or providing (something) . . ." (New Oxford American Dictionary (2001) p. 566; Random House

Dictionary of the English Language (2d ed. 1987) p. 648 ["to secure" or "to make sure or certain"].)

30. At the time of hearing, nearly three years had passed since Oakland had agreed to fund the IEE and two and a half years had passed since Oakland took affirmative action to try to reach an agreement regarding an alternate assessor. The impasse over the course of those years remained the requested assessor. As noted, the legal requirement imposed on Oakland is to ensure that the IEE be provided. At some point, therefore, it was incumbent on Oakland to take affirmative steps to reach an agreement regarding the provider.

31. Oakland argued that the delay and its refusal to contract with Dr. Peterson were justified because she did not meet agency criteria. It is true that if an IEE is at public expense, the criteria under which the assessment is obtained, including the location, limitations for the assessment, minimum qualifications of the examiner, cost limits, and use of approved instruments are to be the same as the criteria that the public agency uses when it conducts an assessment, to the extent that those criteria are consistent with the parent's right to an IEE. (34 C.F.R. § 300.502(e)(1).) In this case, however, Oakland's assertion that Dr. Peterson did not meet agency criteria was not based upon something finite such as lacking the proper license, or her refusal to comply with Oakland's policies for *this* student. Despite so much time passing, no one from Oakland ever contacted Dr. Peterson to see if she maintained the contract requirements Oakland found inconsistent with its agency criteria, and if so, whether she would make an exception in this case. The duty to ensure that an IEE is provided and not just agreed to, in this case, included taking some affirmative steps to reach an agreement with the assessor. That should have included contacting the requested assessor to see what her

requirements would have been for this student's assessment.[9] It is determined that Oakland did not provide the agreed-upon IEE without unnecessary delay and this constitutes a procedural denial of FAPE.

32. Whether or not a delayed, or in this case, not yet conducted, IEE significantly impedes the parents' opportunity to participate in the decision-making process, or deprives educational benefit to a student, applies to relief from an unnecessarily delayed IEE. (See, e.g., *Taylor v. District of Columbia* (D.D.C. 2011) 770 F.Supp.2d 105, 109-110.) The IEE is not just an additional tool for determining a student's needs; it is designed to give parents essential information to use in the IEP process. The Supreme Court has stressed the importance of the IEE in redressing the relative advantages a school district has in expertise and in its superior control of information about a student:

> School districts have a natural advantage in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them. . . . [Parents] have the right to an independent educational evaluation of the[ir] child . . . . IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic

[9] This analysis is limited to whether or not Oakland met its obligation to provide the assessment without unnecessary delay. No finding is made regarding whether or not the two articulated policies Oakland considers inconsistent with its agency criteria are justified under the law.

> opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.

(*Schaffer v. Weast, supra*, 546 U.S. at pp. 60-61 [citations and internal quotation marks omitted].) Recently the Eleventh Circuit, in rejecting an attack on the regulation allowing for an IEE to be conducted at public expense, observed that "[t]he right to a publicly financed IEE guarantees meaningful participation throughout the development of the IEP." (*Phillip C. v. Jefferson County Bd. of Educ.* (11th Cir. 2012) 701 F.3d 691, 698 [citation omitted].)

33. In this case, the length of the unnecessary delay was from November 2011, after Great-Aunt rejected the Diagnostic Center, up to the time of hearing, nearly two and one-half years later. Oakland correctly contends that, similar to the occupational therapy and assistive technology assessments, there was no evidence that its delay in providing Student's IEE had any adverse effect on his education. Oakland does not address the impact of the delay on Great-Aunt's participatory rights. As with those other assessments, had Oakland timely provided the requested IEE, the results would have been available to Great-Aunt and Grandmother during the intervening IEP team meetings and would have assisted them and the rest of Student's IEP team in discussing his program and placement for his first grade, second grade, and third grade years. The delay deprived them of significant and potentially useful information concerning Student's disabilities and educational needs during the foundational academic years of first through third grade. This deprived Great-Aunt from meaningfully participating in the decision making process regarding Student's program, and therefore, constituted a denial of FAPE.

Issue 5 – IEP Team Meeting Regarding 30-day Placement

34. Student argues that because Tobinworld II is located in Antioch, whose public schools are part of a different school district and special education local plan area (SELPA), Oakland was obligated to hold a 30-day placement IEP team meeting after Student began attending on May 7, 2013. Student is not correct.

35. A student eligible for special education services who transfers from one school district to another in a separate SELPA during an academic year is entitled to receive FAPE, including services comparable to those described in the previously held IEP, until the local education agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with the law, which in California, is to take place within 30 days from the transfer. (20 U.S.C. § 1414(d)(2)(C)(i)(I); Ed. Code, § 56325, subd. (a)(1).)

36. Tobinworld II is a nonpublic school. Student was placed at Tobinworld II pursuant to an IEP and at all times has been the legal responsibility of Oakland. He has not transferred to another school district in a different SELPA. Therefore, Oakland was not obligated to hold a placement IEP team meeting within 30 days of Student attending Tobinworld II.

Issue 6 – Oakland's Reading Clinic and Reading Specialist Services

37. Student argues that Oakland denied him a FAPE because his IEP's from December 19, 2012, forward should have included either enrolling him in Oakland's reading clinic or providing him reading specialist services. Oakland asserts that its IEP's were designed to meet Student's unique needs in the area of language arts, including reading and writing, and also to address and minimize his negative and disruptive behaviors. It additionally asserts that the reading clinic is an intervention program that was not appropriate for Student due the nature and frequency of his negative behaviors and that he did not require reading specialist services beyond the goals and services

included in his IEP's. For the reasons stated below, Student did not establish that he required either Oakland's reading clinic or a reading specialist to receive a FAPE.

38. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and that the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

39. 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).)

40. An IEP must also contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the regular education curriculum; and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

41. The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Rowley, supra*, 458 U.S. at 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir.1987) 811 F.2d 1307, 1314.) As long as the school district's offer was reasonably calculated to provide educational benefits, it constitutes an offer of a FAPE. (Rowley, supra, 458 U.S. at 200.) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K., supra*, 811 F.2d at 1314.)

42. During the time period at issue, Student had two agreed-upon and implemented IEP's (May 14, 2012, and March 15, 2013), and one IEP that offered to change placement to a special day class (December 19, 2012) that was not agreed upon. Each of the aforementioned IEP's contained Student's present levels of performance in reading and language arts. They contained measurable goals designed to meet his reading and language arts needs and also accommodations to be provided to help Student access the general education curriculum. The placements offered in the consecutive IEP's called for general education with RSP support and a one-to-one behavior aide (May 14, 2012), a special day class with a one-to-one behavior aide (December 19, 2012), and finally placement at a non-public school designed to address behavior challenges. These placement offers were appropriate for Student based upon his escalating behavior needs.

43. It is determined that the IEP's offered during the 2012-2013 and 2013-2014 school years were designed to meet student's unique needs and were reasonably calculated to provide educational benefit. Moreover, the evidence establishes that he actually received educational benefit in language arts, specifically in reading and writing. Accordingly, it is determined that regarding language arts, including in the area of reading and writing, Oakland did not deny Student a FAPE from December 19, 2012, forward.

44. Even if the District's offers had not provided Student with FAPE regarding reading, Oakland's reading clinic was not appropriate for Student. It is an intensive intervention program that includes several transitions throughout the day (including bussing from school of attendance to intervention site and back again), different routines and expectations for behavior in the different settings, requires sustained concentration and effort for long periods of time (for two to four hours per school day), and requires students to work collaboratively with another student and one instructor. These are some of the exact same tasks that were repeated triggers for Student's negative behaviors. In previous placements, even with a one-to-one aide the negative behaviors were not eliminated and ultimately, Student required placement at a behavior-based nonpublic school to meet his needs. Therefore, Oakland did not deny Student a FAPE by failing to conduct a formal assessment for its reading clinic.

45. Student did not present evidence at hearing to establish that Student had a need for a reading specialist or what particular type of reading specialist he required to meet his needs. Accordingly, Student did not meet his burden to establish he required reading specialist services to receive a FAPE.

Issue 7 – Necessary Participants at November 6, 2013, IEP Team Meeting

46. Special education law requires certain individuals to attend IEP team meetings. In particular, the IEP team must include: (a) the parents of the child with a disability; (b) not less than one regular education teacher of the child, if the child is or may be participating in the regular education environment; (c) not less than one special education teacher, or where appropriate, not less than one special education provider of the child; (d) a representative of the school district who is knowledgeable about the availability of the resources of the district, is qualified to provide or supervise the provision of special education services and is knowledgeable about the general education curriculum; (e) an individual who can interpret the instructional implications

of evaluation results, who may be a member of the team described above; (f) at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (g) whenever appropriate, the child with a disability. (20 U.S.C. § 1414 (d)(1)(B); Ed. Code, § 56341, subd. (b)(1)-(7).)

SCHOOL SITE ADMINISTRATOR

47. Student argues that Ms. Forghani was required to attend the November 6, 2013, IEP team meeting because she is Tobinworld II's principal. That is not required under the law. The law requires that a representative of the school district who is knowledgeable about the availability of resources of the district, is qualified to provide or supervise the provision of special education services, and is knowledgeable about the general education curriculum attend the meeting. (20 U.S.C. § 1414 (d)(1)(B); Ed. Code, § 56341, subd. (b)(4)(A)-(C).) Ursula Reed, Oakland's special education coordinator for nonpublic schools, attended the meeting as the representative from Oakland. It is determined that she meets the criteria outlined above. Therefore, Oakland did not deny Student a FAPE because a school site administrator was not at the November 6, 2013, IEP team meeting.

MICHAEL WILLIAMS AND BEHAVIOR SUPPORT PLAN

48. Michael Williams drafted Student's behavior support plan but did not attend the IEP team meeting during which it was presented. Student argued that this was a violation of the law. Oakland argues that Mr. Williams was not required to attend because both Ms. McCarthy, Tobinworld II's IEP coordinator, and Ms. Turner, Student's teacher, were present able to answer questions about the behavior support plan.

49. Although frequently the person who conducts an assessment is present to discuss the results, that is not what the law requires. Specifically, an individual who can

interpret the instructional implications of evaluation results is required to attend. (20 U.S.C. § 1414 (d)(1)(B); Ed. Code, § 56341, subd. (b)(5).) In this case, Mr. Williams drafted the behavior support plan. Tobinworld II, however, uses an incentive based behavior intervention model throughout the entire school. Nearly every child enrolled at the school has a behavior support plan. The plans are individually designed to address the most frequent behaviors exhibited by a particular student and rewards are based on what motivates that student the most. The data that is collected regarding the type, duration, and frequency of the behavior is collected not by Mr. Williams, but by the classroom teacher. The classroom teachers receive specialized training in how to collect behavior data.

50. In this case, Ms. Turner collected the data and provided it to Mr. Williams. He drafted the plan, but once Great-Aunt consented to the plan, it would have been implemented by Ms. Turner. Ms. Turner established that she could interpret the instructional implications of the evaluation results. She was also knowledgeable about Student's behavior and the plan. Therefore, Student was not denied a FAPE because Mr. Williams did not attend the November 6, 2013, IEP team meeting.

Issue 8 – Transportation Services

51. Student raises several allegations regarding transportation services to and from Tobinworld II. The allegations in this issue can be divided into two categories, subdivision (a) that consists of an ongoing nature, and subdivisions (b) – (g) that are alleged to have occurred as isolated or infrequent incidents. They will be analyzed accordingly.

52. As noted previously, an eligible child's special education program may require "related services" to enable the child to benefit from special education. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a).) In California, "related services" are called "designated instruction and services." (Ed. Code, § 56363, subd. (a).) As a related service,

"transportation" means (1) travel to and from school and between schools, (2) travel in and around school buildings, and (3) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16)(i)-(iii).) The decision to provide transportation services is based upon the unique needs of the student. (*McNair v. Oak Hills Local School District* (8th Cir.1989) 872 F.2d 153, 156.)

BUS RIDE TO SCHOOL - ONGOING ISSUE

53. It is undisputed that Student was transported to and from school from approximately May 2013 through January 2014 in Tobinworld II's vans. The school day commenced at 8:30 a.m.; however, Tobinworld II's vans were consistently late and Student routinely arrived at school between 9:00-9:15 a.m.. During this time, Student missed activities, including journaling and breakfast that could have helped improve his handwriting and socialization, two areas of need for Student.

54. Oakland argues that even if he did miss instructional time, the evidence does not establish Student was denied educational benefit. This assertion overlooks the fact that due to Tobinworld II's bus schedule, Student's school day was essentially shorted by 30 to 45 minutes. This is not consistent with the law. Section 3053 of title 5 of the California Code of Regulations subdivision (b)(2)(B) states:

> When the IEP team determines that an individual cannot function for the period of time of a regular school day, and when it is so specified in the IEP, an individual may be permitted to attend a special class for less time than the regular school day for that chronological peer group.

Like many other IEP requirements, this regulation ensures that the IEP team actually consider an issue. A shortened school day is tolerated under the law only when the

reduction is contemplated by the IEP team and is linked to the student's developmental goals and unique needs. (*Adams v. Oregon* (9th Cir. 1986) 793 F.2d 1470, 1491.)

55. The decision here was not a decision of Student's IEP team based upon his unique needs. Rather, it was just an accepted practice to accommodate the school's bus schedule. It is determined that the transportation provided to Student via the Tobinworld II's vans deprived him valuable school time and effectively shortened his school day. The shortened school day was not an IEP team decision. Reducing Student's school day by 30-45 minutes consistently from May 2013 through January 2014 resulted in a denial of FAPE.

ADDITIONAL TRANSPORTATION ALLEGATIONS- ISOLATED OR INFREQUENT INCIDENTS

56. Student asserts multiple alleged transgressions conducted by the Tobinworld II's van drivers resulted in a denial of FAPE. Student has not demonstrated that any of these incidents, if proven, impeded his ability to make meaningful progress in his education. Student has, therefore, failed to meet his burden of proof through the presentation of persuasive evidence that the alleged isolated or infrequent incidents regarding the bus transportation taken individually or as a whole prevented him from making meaningful progress at school, or otherwise impeded his right to a FAPE.

REMEDIES

1. ALJ's have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).)

2. Appropriate equitable relief, including compensatory education, can be awarded in a decision following a due process hearing. (*Burlington*, *supra*, 471 U.S. at p. 374; *Puyallup, supra,* 31 F.3d at p. 1496).) The right to compensatory education does not

create an obligation to automatically provide day-for-day or session-for-session replacement for the opportunities missed. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033 (citing *Puyallup, supra.,* 31 F.3d at p. 1496).) An award to compensate for past violations must rely on an individualized analysis, 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.*)

3. It was determined in this decision that Oakland denied Student a FAPE by holding an IEP team meeting on May 14, 2012, without Great-Aunt present. Great-Aunt is currently his designated educational rights holder. Unless her legal status regarding Student is altered, Oakland will be ordered to ensure that she is properly noticed of all future IEP team meetings.

4. It was determined in this decision that Oakland denied Student a FAPE by failing to conduct assessments in the area of occupational therapy and assistive technology. Student requests that Oakland be ordered to fund IEE's in these areas as opposed to being able to conduct its own assessments. Although typically an IEE will not be ordered until after the district has been given an opportunity to conduct its own assessments, in light of the greater than two-year delay from the time consent was initially given for the assessments, IEEs are an appropriate remedy for this denial of FAPE.

5. It was also determined that Oakland failed to provide a psycho-educational IEE without unnecessary delay, thereby denying Student a FAPE. Despite Oakland's assertion that Dr. Peterson's contractual practices are not consistent with its

agency criteria, in this case funding an assessment by Dr. Peterson is an appropriate remedy in light of the length of the delay.

6. Student is also entitled to compensatory education for Oakland's denial of FAPE from May 2013-January 2014, due to the fact that Student routinely missed approximately 30 to 45 minutes of instructional time per day. Student requests reading specialist services to compensate for any lost educational opportunity. In his closing brief, Student specifically requests in home tutoring services from Mobile Minds Teaching. This request was made for the first time in Student's closing brief and no evidence was presented regarding the appropriateness of Mobile Minds Teaching or the need for in home services. Accordingly, those specific requests for compensatory education are denied.

7. For a period of approximately eight months Student missed a portion of his language arts time specifically in journaling and time to interact socially with his peers during breakfast. To compensate for this loss of educational opportunity, it is determined that Student is entitled to 15 hours of academic compensatory education and 10 hours of social skills training. Due to Student's difficulty maintaining attention and sustained focus, the academic sessions will be limited to 30 minutes each and not more than two times per week.

ORDER

1. For all future IEP team meetings held by Oakland regarding Student, Oakland will ensure that Great-Aunt, who is his designated educational rights holder, is properly noticed of IEP team meetings unless and until her legal status regarding Student is altered.

2. No later than August 1, 2014, Great-Aunt will provide Oakland with the names of qualified proposed assessors to conduct independent education evaluations in the areas of occupational therapy and assistive technology. No later than August 15,

2014, Oakland will contract with those providers, without requiring that they release their reports before being paid or imposing timelines for completion of the assessments. Oakland will pay the assessors directly for their assessments. Oakland is not required to pay for travel costs in excess of 100 miles from Oakland, if the requested assessors are located outside of that geographic area.

3. No later than July 1, 2014, Oakland will contract with Dr. Peterson to conduct a psycho-educational assessment of Student. For the purpose of this assessment, Oakland will not require Dr. Peterson to release her report prior to being paid for the assessment nor will it impose a time limit on the assessment. If Dr. Peterson determines that she is unable or unwilling to conduct Student's assessment, Oakland will actively seek to reach an agreement with Great-Aunt regarding an alternate assessor. This may involve contacting assessors not currently on Oakland's approved list. Oakland will pay the assessor directly for their assessment. Oakland is not required to pay for travel costs in excess of 100 miles from Oakland, if the requested assessor is located outside of that geographic area.

4. After the independent assessments ordered above are completed, Oakland will schedule an IEP team meeting and pay for the three assessors to attend the IEP team meeting(s) where their individual assessments are discussed. Oakland is not required to pay for travel costs in excess of 100 miles from Oakland, if the assessor(s) is located outside of that geographic area.

5. Starting no later than July 1, 2014, and finishing no later than the conclusion of the 2015 extended school year, Oakland will provide Student with 15 hours of individual academic instruction in addition to the regular school day. The sessions are to be no more than 30 minutes and no more than two times per week. The academic instruction is to cover language arts that can include both reading and writing. This may be done by one of Oakland's credentialed special education teachers or by a

non-public school or agency, at Oakland's discretion and is to be provided at Student's school of attendance.

6. Starting no later than September 1, 2014, and finishing no later than the conclusion of the 2015 extended school year, Oakland will provide Student with 10 hours of social skills training. This is to be provided in a small group setting with peers and, as such, may be provided during the regular school day. This may be done by District staff or a non-public school or agency, at Oakland's discretion and is to be provided at Student's school of attendance.

7. Compensatory academic instruction is not to be provided on the same days as compensatory social skills training.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on issues one, three, four, and eight (a). Oakland prevailed on issues two, five, six, seven, and eight (b) – (g).

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATE: June 9, 2014

/s/

ALJ JOY REDMON

Administrative Law Judge

Office of Administrative Hearings