

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CABRILLO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015030583

CORRECTED¹ DECISION

Student filed a due process complaint with the Office of Administrative Hearings, State of California, on March 11, 2015, naming Cabrillo Unified School District (Cabrillo). The matter was continued for good cause on March 25, 2015. Student filed an amended complaint on May 20, 2015.

Administrative Law Judge Cole Dalton, Office of Administrative Hearings, State of California, heard this matter in Half Moon Bay, California, on July 15 - 16, 21- 23, and 27 - 28, 2015.

Laurene Bresnick, Attorney at Law, represented Student. Student's mother and father attended all days of hearing. Student was not present during the hearing.

Matthew J. Tamel, Attorney at Law, represented Cabrillo. Attorney Steven Wong and

¹ This Corrected Decision is issued to correct the November and December 2013 references to the correct year 2014, in the first sentence of the Remedies section and in the Order, 1.a. and 1.c. This Decision was issued within applicable timelines. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.)

Director of Special Education Melanie Raymond were also present on behalf of Cabrillo.

At the conclusion of the hearing, OAH granted the parties' request for continuance to August 19, 2015, to submit written closing briefs. Briefs were timely filed and the matter was submitted on August 19, 2015.

ISSUES²

1. Did Cabrillo deny Student a free appropriate public education by:
 - a. Failing to provide timely and appropriate assessments to determine eligibility and hold an individualized education program team meeting and offer special education placement and services, following Parents' request for a special education referral in (i) March, (ii) April, (iii) May, and (iv) June 2013; and
 - b. Failing to conduct timely and appropriate assessments in all areas related to Student's suspected disability, including (i) social, emotional, behavioral, (ii) assistive technology, (iii) physical therapy, (iv) occupational therapy, and (v) adaptive physical education, from the March 2013 extended school year through the 2013 – 2014, and 2014 – 2015 school years, included extended school years?
2. Did Cabrillo deny Student a FAPE by failing to provide Parents with prior written notice when it:
 - a. Refused to assess Student in response to Parents' request for referral in (i) March, (ii) April, (iii) May, and (iv) June 2013;
 - b. Directed Parents to Belmont Redwood Shores School District (Belmont) for initial assessment;

² The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School District* (9th Cir. 2010) 626 F.3d 431, 442-443.)

- c. Offered one IEP placement option or an ISP as the only alternatives in the IEPs of (i) October 4, 2013, and (ii) March 17, 2014; and
 - d. Failed to describe what assessments, records, or reports it used to make its (i) October 4, 2013, and (ii) March 17, 2014 IEP offers?
3. Did Cabrillo commit procedural violations, which denied Student a FAPE

by:

- a. Failing to consider a continuum of alternative programs and placement options in the IEPs of (i) October 4, 2013, (ii) March 17, 2014, (iii) November 19, 2014, and (iv) January 2015 as amended March 2015;
 - b. Predetermining its offer of placement in the IEPs of (i) October 4, 2013, (ii) March 17, 2014, (iii) November 19, 2014, and (iv) January 2015, as amended March 2015;
 - c. Failing to make a formal, specific, written offer that clearly identified the proposed placement and services and the start date, frequency, location, and duration of placement and services in the IEPs of (i) October 4, 2013 and (ii) March 17, 2014; and
 - d. Failing to identify accurate present levels of performance and develop appropriate goals designed to address Student's unique needs in the in the areas of (i) academics, (ii) behavior, (iii) social development, (iv) emotional development, (v) gross motor, and (vi) fine motor in the IEPs of (A) October 4, 2013, (B) March 17, 2014, (C) November 19, 2014, and (D) January 2015 as amended March 2015,?
4. Did Cabrillo substantively deny Student a FAPE by:
- a. Failing to offer an appropriate placement, program, and services to adequately address needs in the areas of (i) behavior, (ii) social development, (iii) emotional development, (iv) occupational therapy, (v) physical therapy, (vi)

- assistive technology, and (vii) medical needs relating to her severe risk of stroke in the IEPs of (A) October 4, 2013, (B) March 17, 2014, (C) November 19, 2014 and (D) January 28, 2015, as amended March 27, 2015, to adequately address; and
- b. Failing to offer an appropriate placement, program, and services to adequately address adaptive physical education needs in the IEPs of (i) November 19, 2014 and (ii) January 28, 2015, as amended March 27, 2015?

SUMMARY OF DECISION

Student met her burden of establishing that Cabrillo violated its duty to provide Student with timely assessments and an IEP meeting to determine eligibility following Student's written requests for assessments for eligibility from March through June 2013. Further, Student persuasively demonstrated that Cabrillo's proposed IEP's failed to address Student's unique needs in all areas of suspected disability until the time of filing the complaint in March 2015. Specifically, Cabrillo continued putting off formal assessments in the areas of occupational therapy, adaptive physical education, behavior, and social and emotional development. The lack of formal assessments led to IEP's that did not provide adequate services, accommodations, modifications, and supports in academics or gross motor needs in the IEP's of October 4, 2013, March 17, 2014, and November 19, 2014, and in behavior, and social and emotional development through all IEP's at issue. Further, Cabrillo failed to provide supports or services to address Student's medical needs, specifically her moderate risk of stroke, in any IEP from October 2013 through March 2015. On that basis, Cabrillo denied Student a FAPE during all relevant time periods by failing to offer an appropriate placement or services in the areas of behavior, social and emotional development, occupational therapy, and medical needs.

Student did not meet her burden on the need for physical therapy or assistive technology assessments or services, prior written notice in regards to the October 2013

and March 2014 IEPs, or on the continuum of placement, predetermination, and specificity of offer claims. Student did not persuasively show that Cabrillo's January 2015 IEP failed to offer appropriate academic and gross motor goals, or that the fine motor goals were not designed to offer educational benefit during all relevant time periods.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student was nine-years-old at the time of hearing. She was initially found eligible on June 6, 2013, for special education and related services at age seven, under the categories of traumatic brain injury and other health impairment.

2. Student lived with her parents within the jurisdictional boundaries of Cabrillo and attended private schools located within Belmont Redwood Shores School District's (Belmont) jurisdictional boundaries at all relevant times. Belmont and Cabrillo were part of the San Mateo County Special Education Local Plan Area (SELPA).

EVENTS PRIOR TO INITIAL REFERRAL FOR ELIGIBILITY

3. Student was diagnosed at age two with a type of very aggressive brain tumor, which left no known long-term survivors. Student underwent surgery to remove the tumor, which involved removal of approximately 25% of her frontal lobe, followed by intense courses of chemotherapy and other treatments designed to prevent the tumor from returning. When Student's physical condition stabilized, Parents placed Student at Belmont Oaks Academy, a private school close to Father's office in Foster City where he could be nearby if Student had a medical emergency.

4. Student attended Belmont Oaks for pre-kindergarten and kindergarten. Belmont Oaks was a general education campus with 250–300 students. Brittany Hale was the assistant teacher for Student's kindergarten class during the 2012 – 2013 school year, and the head teacher during the past two years. She holds a Bachelor of Arts in

psychology and a multiple subjects teaching credential. Student's kindergarten class had approximately 22 – 26 children with 2 full time teachers.

5. When Student first attended Belmont Oaks, she was more social and engaged in imaginative play with some of her classmates. As time went on, classmates became somewhat resentful of the special treatment Student was given and engaged less with her. Student became frustrated with group work, as she could not keep pace with her peers. She required a great degree of one-on-one attention to complete even a fraction of the work that was expected of her peers. The curriculum also proved to be physically demanding of Student causing her to become fatigued and require naps. Student had deficits in fine motor, gross motor, social-emotional, and behavioral development, and difficulties writing. She had diminished balance, which resulted in her falling more often than her peers. She was prone to outbursts and would cry often.

6. Ms. Hale met with Parents on a weekly to bi-weekly basis to review Student's progress and discuss accommodations that may help. During the kindergarten year, Ms. Hale concluded that Belmont Oaks was not equipped to meet Student's needs because the teachers lacked the necessary training, resources, or experience.

7. In January 2013, the Belmont Oaks principal suggested that the family seek an alternative placement. At the same time, Student's medical team at University of California at San Francisco advised Parents to seek services from a public school district, which would have special education resources.

8. Also in January 2013, Student underwent another MRI to monitor her brain tumor. Her doctors found that one of the major blood vessels in her brain experienced significant narrowing, which put her at a highly increased risk of pediatric stroke and explained to Parents the importance of monitoring Student for symptoms of neurological changes. The medical team advised Parents to place Student at a school close to one of them, so they could monitor signs that would be indicative of a stroke.

9. Student received medical care at Lucile Packard Children's Hospital at Stanford University, Benioff Children's Hospital at UCSF, and MD Anderson in Texas. Dr. Theodore Nicolaides, pediatric oncologist at UCSF, provided treatment to Student and continued to follow Student's progress, along with a team of other physicians and providers, including an educational liaison. Dr. Nicolaides and his colleagues advised Parents to seek educational assistance from their local school district. The medical team prepared correspondence, dated May 22, 2013, to help parents seek assessments for special education services, due to the impact of Student's medical treatment on her development.

PARENTS' REFERRALS FOR ASSESSMENT

10. Marcia Oviatt, a family friend and former employee of Belmont, made the initial email contact for Parents to the Director of Special Programs for Belmont Maria Lang-Gavidia, informing her that Parents were ready to pursue a referral for special education services. Ms. Lang-Gavidia responded the same day, asking for a written request for an evaluation.

11. On March 3, 2013, Ms. Lang-Gavidia emailed Father advising him to contact the district of residence, Cabrillo, to seek an assessment for a 504 plan. Belmont left a message with the Special Education Department at Cabrillo regarding the Parents' request for referral for special education.

12. With Father's consent, on March 5, 2013, Belmont forwarded the email chain regarding Parents' concerns to the Administrative Assistant for Cabrillo Betty Antone. Ms. Antone included Cabrillo's interim Director of Special Programs Mark Loos in the email exchange. She advised Belmont that Cabrillo would contact parents "as soon as possible" after checking in with the SELPA regarding the referral for assessments.

13. On March 8, 2013, Ms. Antone spoke with the SELPA Coordinator Jane Van Epps regarding which district was responsible for assessing Student. According to both districts, the SELPA policy specified that the district of location assess students who were privately placed. On March 13, 2013, Anjanette Pelletier, Senior Administrator for the SELPA, advised Ms. Lang-Gavidia that Belmont was at risk for a compliance complaint if it did not timely respond to Parents' request to assess Student. She explained that "further delay also puts Cabrillo at risk for compliance issues due to not being able to offer a FAPE based on an assessment that [Belmont] should be completing."

14. On March 18, 2013, Belmont agreed to assess Student for eligibility for special education services and sent Parents an assessment plan, referral checklist for private schools located in Belmont, procedural safeguards, and a release for exchange of information. Father signed the assessment plan on March 26, 2013. Belmont was to assess Student in the areas of academics, health, intellectual development, language, speech and communication development, motor development, and social emotional development. Up to this time, Cabrillo did not contact Parents regarding their assessment request or offer to assess Student for eligibility for special education.

15. On April 29, 2013, Father advised Belmont by email that Student was recently reassessed by her neuropsychologist Dr. Cheryl Ambler, and that he would forward the report, once received. He stated he was "reactivating" the request to determine whether Student was eligible for special education services or 504 services. He sent his request to both Belmont and Cabrillo, as Father was unclear which district was responsible for the assessment and IEP and whether that process had begun. Cabrillo did not respond to the renewed assessment request.

NEUROPSYCHOLOGICAL EVALUATION OF APRIL 2013

16. Dr. Ambler holds a Doctorate of Philosophy degree in Clinical Psychology, with specialization in Neuropsychology and Child Psychology. She also holds a master of

arts in Marriage, Family and Child Counseling and a bachelor of arts in Sociology with a minor in Psychology. In addition to practicing in her field, conducting assessments, and consulting with other professionals in the area, she has been consulting with schools and teachers, attending IEP team meetings, and working with medically fragile students for over 20 years. Dr. Ambler was qualified to conduct assessments of Student, interpret the data, and make recommendations regarding Student's levels of functioning and school program. At hearing, she persuasively explained Student's needs, her assessments, and contact with Cabrillo regarding the IEP process.

17. Dr. Ambler initially assessed Student in August 2009, to obtain baseline levels of functioning prior to Student's extensive medical treatment. In comparison to her 2013 reassessment, Dr. Ambler found that Student's intelligence scores dropped from superior to average, and her processing speed slowed, impacting her verbal and visual memory. These changes were attributed to the ongoing effects of Student's medical treatment and it was anticipated that such changes would continue into Student's early childhood.

18. Dr. Ambler identified areas of need, including fine motor control, mild hearing loss, attention issues, and a tendency to engage in imaginative play when Student was stressed and confused about her work. Dr. Ambler recommended an occupational therapy assessment, and placement in a classroom with a small student to teacher ratio, resource support for reading and math, a friendship group at school to develop social-emotional skills, and school counseling services for 20 minutes two times per month to teach coping skills and monitor Student's adjustment to academics and socialization. Supports were recommended, including extended time to complete work, positive reinforcement, scaffolding, work reduction, preferential seating, and development of a signal by Student for requesting additional support.

19. On April 30, 2013, Parents sent letters to Cabrillo and Belmont, advising the districts of Student's extensive medical history, physical and intellectual deficits and risk of stroke, and again asked for an assessment for special education services or 504 services. Parents were still unclear as to which district had a duty to assess their child and offer an IEP. Email correspondence from Ms. Antone confirmed Cabrillo's receipt of the letter and advised that the district would be "contacting you regarding your request as soon as possible."

20. Cabrillo was on notice that Student was a child living within its jurisdictional boundaries and that it should have assessed for special education eligibility as early as March 5, 2013. By early May of 2013, Cabrillo had sufficient notice of Student's many deficits relating to her suspected disability.

INITIAL ASSESSMENTS AND ELIGIBILITY

21. On May 1, 2013, Ms. Antone emailed Father, indicating that Belmont would be conducting assessments. On May 6, 2013, she sent another email acknowledging receipt of Dr. Ambler's neuropsychological evaluation, forwarded by Father. She forwarded the assessment to Cabrillo. Cabrillo special education director Mark Loos and Belmont special education director Maria Lang-Gavidia were included in the email exchanges of May 2013.

22. Belmont conducted its assessments on May 29 and 30, 2013 for the sole purpose of establishing eligibility, and not with the intent of offering an IEP because it was not the district of residence. Belmont's school psychologist Gina Sunie-Lopez conducted a psychoeducational assessment, and recommended that Student be found eligible for special education under the categories of traumatic brain injury and other health impairment, due to her cancer, brain trauma, and mild hearing loss. Student scored below average in attention and executive function, with areas of need in attention, stamina, impulsivity, participation, and effort. Student had areas of weakness

in verbal recall, auditory attention, and behavioral productivity. During interviews, Parents expressed concerns regarding medical needs, indicating that Student was at risk for pediatric stroke, among other things.

23. Based upon academic assessments, Student could not maintain attention to tasks that took more than a few minutes. She required constant redirection. Student scored in the low range in reading fluency (reading and determining truth of simple sentences), applied problems (analysis and solving simple addition, subtraction and multiplication facts), and writing fluency (formulating and writing simple sentences quickly). Overall, she scored in the low range in broad reading and broad math and low average in broad written language.

24. Belmont did not test Student in the areas of social-emotional or behavioral development. Student did not qualify for speech and language services and this was not an area of dispute at hearing.

JUNE 6, 2013 IEP

25. Belmont gave notice of an IEP team meeting for June 6, 2013, to review the results of Belmont's assessments, "and discuss [Individual Services Plan] recommendations." The team documented areas of need and recommendations for placement, services, and supports consistent with the findings of Dr. Ambler. No one from Cabrillo participated in the meeting. The meeting was documented on an IEP team meeting notes page, attached to a SELPA ISP document. Belmont concluded that Student should be provided with ISP services of 60 minutes, annual consultation. However, the ISP did not identify which district would be responsible for implementation. Though Student was found eligible for an ISP, the team made no statement of eligibility in the paperwork.

26. At the meeting, Parents expressed confusion over the process of being offered an educational placement. They thought they would be offered an IEP at the

June 2013 meeting. Yet, they were told at the meeting, as reflected in the IEP Team Meeting Notes, "the district of residence will need to follow-up if the parents choose to move forward with an IEP or 504 plan at this time."

27. At hearing, Father opined that Belmont seemed equally confused as to why they were holding a meeting when they could not offer Student an IEP. He credibly explained that his decision to sign the ISP was not intended to indicate that he did not want an IEP but, rather, to accept consultation services from Belmont while they awaited an IEP from Cabrillo.

28. On June 7, 2013, Parents sent an Interdistrict Transfer Agreement Application to Cabrillo, seeking transfer of Student to Belmont. At hearing, Father explained that he thought Belmont could offer an IEP if Student transferred there, in light of Cabrillo's lack of responsiveness. Cabrillo interpreted the request for transfer to mean that Parents were no longer seeking an IEP from Cabrillo.

29. The transfer application states that the transfer was sought to meet Student's special physical health needs. Specifically, Parents identified Student's increased risk of stroke and their need to be near her in case of medical emergency. Parents also stated: "[b]ecause she is in private school for the remainder of the school year, she received an ISP at the team meeting held on 6/6/13. An IEP is yet to be developed." Cabrillo accepted the interdistrict transfer on August 16, 2013, but Belmont rejected it on August 18, 2013.

30. On June 20, 2013, Belmont sent Cabrillo the ISP of June 6, 2013, along with Belmont's psychoeducational, academic and speech and language assessments and Dr. Nicolaidis' May 22, 2013 letter outlining Student's medical history and needs.

31. As of August 18, 2013, despite Parents' numerous requests, and despite having ample information about Student's unique needs from a variety of sources,

Cabrillo had still not met its obligations under the IDEA by contacting Parents to assess Student, arrange an IEP team meeting, and make an offer of FAPE.

2013 – 2014 SCHOOL YEAR

October 4, 2013 IEP Team Meeting at Cabrillo

32. On October 4, 2013, Cabrillo held its first IEP team meeting for Student, using the assessments provided by Belmont. Cabrillo did not assess in the areas of behavior, social-emotional development, fine or gross motor development, or any other areas of need, and relied solely on the psychoeducational assessment that had been performed by Belmont. None of the Belmont providers attended the IEP meeting. School psychologist Steve Lyons, resource specialist Kerrie DeMartini, and special education director Meredith Raymond attended the meeting on behalf of Cabrillo. The general education teacher did not attend.

33. The IEP document created by Cabrillo noted that Student was reported to be at risk of having a stroke and suffered from chronic pain in her hands, fingers, and feet. It noted that she had a significant health history.

34. The IEP team identified present levels of performance as “Broad Math Scores—low range” and “Broad Reading Scores—low to very low range.” The IEP team drafted goals in the areas of math calculation, applied problems, sight words, reading decoding, and word recognition. The IEP team did not address Student’s weaknesses in attention, behavior, and writing through any goals, accommodations, or modifications in the IEP. The team also did not address Student’s health concerns, particularly regarding her elevated risk of stroke and peripheral neuropathy.

35. Cabrillo found Student eligible for special education under traumatic brain injury and other health impairment and offered a general education placement with 120 minutes four times a week of resource specialist program supports in reading and math

at her school of residence, El Granada Elementary School. Cabrillo indicated it would look into occupational therapy and/or physical therapy regarding Student's issues with her hands and lower legs. Parents were concerned about the offer of general education placement, as that had not worked at Belmont Oaks, causing them to place Student at Charles Armstrong School. However, Cabrillo only offered Parents the choice of accepting the proposed IEP or accepting "minimal services" through an ISP at Charles Armstrong School. Cabrillo did not offer to fund the private placement. Parents took a copy of the IEP home to review.

36. At the end of the meeting, Cabrillo provided an assessment plan for an adaptive behavior assessment and an occupational therapy screening, and a release of information for Student's current school, Charles Armstrong School. Father signed both documents and returned them that day.

37. Mother met with Ms. Raymond on October 16, 2013, to review her concerns with the offered program, including Student's needs in writing and gross and fine motor issues due to severe neuropathy. Ms. Raymond explained placement options, including use of a services plan, and assured Mother that Cabrillo would assess in the area of behavior and do an occupational therapy screening. Student did not have an agreed upon implemented IEP at the end of this meeting.

November 4, 2013 Informal Screenings

38. Tim Nash, an occupational therapist from Cabrillo, conducted a one-hour observation of Student at Charles Armstrong School on November 4, 2013, and prepared a written summary of his observations. He concluded that writing was slow and laborious for Student, and she needed several breaks to stretch out her hands and fingers. Mr. Nash concluded that Student might need an occupational therapy evaluation to assess needs in the area of fine motor abilities related to writing. Mr. Nash's observation was not a formal occupational therapy assessment.

39. Yolanda Puga, Behavior Analyst for Cabrillo, also informally observed Student for one hour at Charles Armstrong School on November 4, 2013, interviewed Student's teachers, and prepared a written summary of her observations. She did not test Student or administer any rating scales. In Ms. Puga's opinion, the educational setting at Charles Armstrong School was appropriate for Student. Teachers explained their struggles with Student's behaviors, including her shutting down by crawling under the desk and refusing to do work. One of the teachers reported that Student had been improving. Ms. Puga found that the following modifications, being implemented at Charles Armstrong School, were appropriate for Student: social praise for academic engagement; preferential seating to allow adult prompting and reminders; check-in's to help Student find alternative solutions; praise and acknowledgement for using appropriate coping strategies; regularly scheduled breaks to mitigate fatigue and facilitate work completion; clearly defined parameters for breaks to mitigate escape/avoidance behavior and to facilitate work completion.

40. Ms. Puga did not explain why a complete behavior assessment was not done pursuant to the assessment plan signed by Father. She believed that her input was for the benefit of the Charles Armstrong School staff. She did not intend to determine whether Student needed behavior intervention or support at Cabrillo.

November 20, 2013 IEP Amendment Meeting

41. Mother attended an IEP amendment meeting with Ms. Raymond on November 20, 2013, to review occupational therapy and behavior observations. Neither Mr. Nash nor Ms. Puga attended the meeting. Ms. Raymond summarized the results of the observations but did not explain why a complete behavior assessment had not been done pursuant to the signed assessment plan.

42. Ms. Raymond indicated Cabrillo's intention to conduct a formal assessment either in occupational therapy or physical therapy but did not explain why

one had not been done already. To add to the confusion over the IEP process, Ms. Raymond explained that she would contact Belmont to see who would provide the evaluation(s) and, if needed, an ISP, though Parents had already signed a services plan. Mother was given an assessment plan for occupational therapy and physical therapy at the meeting. Cabrillo received the signed assessment plan on December 12, 2013.

43. By the end of November 2013, Cabrillo had still not formally assessed Student or offered a comprehensive IEP addressing appropriate placement, services, accommodations, or supports for Student based upon her unique needs.

March 17, 2015 IEP Amendment Meeting

44. Cabrillo held another IEP amendment meeting on March 17, 2014, with Father, Cabrillo administrator Melissa Nicovic, occupational therapist Renee Nahum, and physical therapist Katie Callicotte. The purpose of the meeting was to review the occupational and physical therapy evaluations.³

45. Ms. Callicotte opined that Student lacked quality of movement but did not require physical therapy services to access a school campus. She recommended an adaptive physical education referral.

46. Ms. Nahum discussed Student's fatigue during writing activities and peripheral neuropathy. Two goals were developed for handwriting skills and attention. The handwriting goal did not specify how many trials would be measured to obtain the progress towards 80% and provided no baseline defining what "minimal" verbal and visual cues were for Student. Neither goal identified who would be responsible for measuring progress. No changes were made to the deficient goals from the October 2013 IEP.

³ The OT and PT assessments were performed in February 2015. As they were withdrawn as exhibits at hearing, they are not addressed separately, above.

47. Student was offered the same placement and goals from the October 2013 IEP, with the addition of 30 minutes per week of occupational therapy. The IEP did not specify whether the service was to be provided individually or in a group setting or specify an end date. Cabrillo did not offer Student extended school year services. The IEP did not offer any accommodations, modifications, or supports to Student.

48. Disagreeing with the offer of placement, Father signed the ISP on March 26, 2014, in lieu of the placement offered by Cabrillo in the IEP.

Charles Armstrong School – 2013-2014 School year

49. Charles Armstrong School, located within the jurisdictional boundaries of Belmont, provided academic services to students with learning disabilities and dyslexia. Student attended first grade there from the summer of 2013 through the end of the 2013–2014 school year. At hearing, Kari Hoffman, one of Student’s teachers, thoroughly explained Student’s program, modifications, accommodations, and progress. Ms. Hoffman obtained a master of arts in Special Education in 2015. She taught the class with Barbara Sterling, who also holds a master of arts in Special Education along with several teaching credentials. Ms. Hoffman related Student’s areas of need in adaptive behavior, social-emotional development, occupational therapy, academics, and cognitive development, consistent with previous reporters.

50. The classroom had 12 students and 2 teachers. The teachers used a multi-sensory approach and spent a majority of the day breaking the class into small group instruction of 5 to 6 students. Small group instruction was done at a “kidney” table using a white board, a smart board, with minimal visual distractions, sound amplification, fidgets, and tactile materials for students with sensory needs. Student’s curriculum was modified to her level. Student slowly made progress in her curriculum.

51. When Student began attending Charles Armstrong School, she engaged in shut down behaviors such as hiding under her desk. As she adapted to the school

environment, her behaviors improved. However, as the academic demands began to increase, so did Student's maladaptive behavior. Parents privately retained Therapeutic Learning Centers to provide behavior support at the school.

52. Through the course of several meetings with Parents at the end of the school year, Charles Armstrong School staff recommended that Student be placed in a structured, multi-sensory classroom setting with a small student-teacher ratio that could provide some one-on-one instruction, particularly for writing activities.

53. Parents paid \$33,527.80 for tuition for attendance at Charles Armstrong School from July 1, 2013, through November 21, 2014. Parents made one 31-mile round trip per day for Student's transportation to and from school, over 226 school days. Parents seek reimbursement at the then current IRS mileage reimbursement rate of .56 per mile, in the total amount of \$3,923.36. Cabrillo did not challenge the cost of tuition or mileage.

2014 – 2015 SCHOOL YEAR

54. Parents obtained follow up testing from Dr. Ambler to determine what placement would be appropriate for Student. Dr. Ambler reviewed Student's medical history, prior independent and school based assessments, Charles Armstrong School progress reports, Student's October 4, 2013 IEP and March 26, 2014 ISP. She observed student in class, at lunch, and transitioning back to class. She interviewed teachers, Parents, and Student and conducted standardized testing in adaptive functioning, visual motor integration, sensory processing, and social and emotional functioning.

55. Dr. Ambler concluded that Student continued to struggle in academics, particularly in writing activities. She experienced considerable emotional distress both at home and school. She engaged in work avoidance and shut down in the classroom and felt isolated at school. During her several years of medical treatment, Student learned to engage successfully with adults, but did not have the same experience with peers and

had difficulty developing and maintaining friendships at school.

56. Student had continuing fine motor weakness and cataracts related to her medical treatment. Student experienced sensory sensitivity to auditory and vestibular stimuli. She could not work with background noise and reacted negatively to loud noises. She was averse to having her head upside down, even when bending over.

57. Dr. Ambler recommended that an IEP team meeting be held to determine Student's educational needs under the other health impairment eligibility criteria for special education, due to her brain tumor, surgery, chemotherapy, radiation, cataract, and neuropathy. Student needed a placement and program to address neurocognitive delays, gross and fine motor delays, visual difficulties, and social-emotional and behavior deficits. Student required a small student to teacher ratio, with some individualized instruction, behavior intervention, social skills instruction, adaptive physical education, occupational therapy, and individual counseling sessions. She recommended that Parents visit several private placements as an interim to a District placement. She further noted that a school placement should be near Student's Parents' work environment so they could be available to support her medical needs. Cabrillo was provided with Dr. Ambler's report on November 13, 2014.

November 19, 2015 IEP Team Meeting

58. Parents attended a November 19, 2014 IEP team meeting at Cabrillo with Dr. Ambler, Ms. Raymond, Mr. Tamel, Barbara Sterling from Charles Armstrong School, and school psychologist Kim Sullivan. Parents' main concern was Student's behavior. Mother expressed concerns that she tried to reach out to Cabrillo for help but did not believe the March 2014 FAPE offer was appropriate. She indicated that she did not understand the difference between the ISP and the IEP documents.

59. Ms. Sterling reported that Student was disruptive and hid under the desk. These behaviors prevented Student from accessing her academic curriculum and

interfered with the learning of others. Student frequently went to the office to "refuel." The school was using several accommodations, including preferential seating, headphones for sound, a chew for sensory needs and modified curriculum. However, the school no longer believed it could meet Student's needs and would be dis-enrolling Student as of the Thanksgiving break.

60. The team reviewed Dr. Ambler's October 2014 Neuropsychological Assessment Addendum report. Parents requested a one-on-one program for Student.

61. Cabrillo offered to assess Student, requested a release of information, and offered an interim special day class placement at El Granada. Cabrillo informed Parents that it believed Parents had unilaterally enrolled Student in a private placement. Cabrillo provided an assessment plan covering the areas of academics, health, intellectual development, speech, language and communication, motor development, social-emotional development, and vision specialist consult.

62. Cabrillo received the signed assessment plan on November 21, 2014. Cabrillo received the release of information identifying Student's audiologist, primary care physician, psychotherapist, pediatric neuro-oncologist, behavioral therapist, ophthalmologist, and neuro-psychiatrist on November 20, 2014.

63. More than one year after Parents requested assessments and an IEP, Cabrillo was still attempting to assess Student in areas of need that were known to Cabrillo and had only offered an interim placement at a district school pending further assessments.

Arbor Bay Academy

64. On November 19, 2014, through counsel, Parents gave Cabrillo 11 business days' prior written notice of their intent to place Student in a certified non-public school and seek reimbursement because none of Cabrillo's IEPs offered a FAPE. Based upon reports of Dr. Ambler and Charles Armstrong School staff, Parents felt that

Student required more individualized instruction on a smaller campus. Further, Student required a placement near an appropriate medical facility due to her high risk of stroke.

65. Susan Rose was the Director of Arbor Bay Academy from July 2003 through the time of hearing. She worked as an occupational therapist from 1985 through 2003. She holds a master of science in Human Services Administration and a bachelor of science in Occupational Therapy. Arbor Bay had a non-public school certification from the California Department of Education. It was comprised of four classes covering kindergarten through eighth grade. Student attended the first grade through third grade class, which had nine children, a credentialed special education teacher, and two assistants.

66. Student's teacher utilized whole and small group instruction. Student received instruction in English Language Arts in a small group of one-on-one or two-on-one. Instruction was provided using Orton Gillingham, a multi-sensory approach to reading that was successful with her. She received an individualized spelling program and writing assignments and used the Making Math Real program. Her teacher used manipulatives, visual cues, and behavior support in the classroom. The speech language pathologist came into the class one hour per week for social skills training. She received occupational therapy for 30 minutes per week to address fine and gross motor skills and sensory issues.

67. Student's uncontroverted evidence showed that she made progress at Arbor Bay Academy in all areas of academics, behavior, and social skills. Though her progress in many areas was slow, it was commensurate with her abilities. Further, her level of confidence and independence improved with the services and supports provided.

68. Student's tuition for the 2014 – 2015 school year at Arbor Bay amounted to \$25,095.00, for attendance from December 8, 2014, through April 30, 2015. Parents

transported Student, one round trip of 39 miles for 132 school days. Parents seek reimbursement at the IRS mileage rate of .575, for a total of \$2,960.10. Cabrillo did not dispute these figures.

Cabrillo's Multi-Disciplinary Report of January 2015

69. School psychologist Nathania Choi conducted a psychoeducational assessment of Student in January 2015. Ms. Choi, an employee of Cabrillo, holds an Educational Specialist degree in school psychology, a master of arts in counseling, a bachelor of arts in English, and is certified as a Behavioral Intervention Case Manager. She began working as a school psychologist in August 2009, obtaining experience in assessments, crisis counseling, behavior intervention, consulting with school staff, participating in IEP, 504, and student study team meetings.

70. Ms. Choi used a variety of assessment tools including a review of records, interviews with Student's teachers at Arbor Bay non-public school, classroom observation of Student, and administration of several standardized assessments. Ms. Choi concluded Student was eligible for special education as having traumatic brain injury and other health impairment. Student had cognitive deficits in processing speed and memory. She experienced anxiety working on difficult tasks due to her diagnosis of post-traumatic stress disorder. She required frequent breaks due to fatigue. Ms. Choi's findings were consistent with prior testing. At hearing, she agreed that Dr. Ambler's initial report was thorough and findings appropriate. In her opinion, Cabrillo could have considered Dr. Ambler's report to develop an appropriate program for Student and Ms. Choi believed that it had.

71. Cabrillo speech and language pathologist Amy Bennett completed a thorough assessment of Student's speech, language, and communication skills. Student tested, overall, in the average range; Ms. Bennett did not recommend services and her findings were not in disputed at the hearing.

72. Special education teacher Carol Owens conducted an academic assessment of Student. Ms. Owens has a bachelor of arts in Liberal Studies and completed course work for masters in special education. She holds a Learning Handicapped Teaching Credential and a Professional Clear – Multiple Subject Teaching Credential. She taught second grade from mid-1985 through mid-1989. She worked as a special education teacher for a learning handicapped special day class from September 1990 through June 1997. She has been a teacher with Cabrillo for 15 years and was teaching the mild to moderate special day class at El Granada at the time of hearing.

73. Ms. Owens administered the Woodcock Johnson Test of Achievement, III, to measure Student's academic proficiency. Based upon the test results, Ms. Owens concluded that Student had deficits in reading, writing, and math, and in retention of letters and numbers. Student's vocabulary and language skills were areas of strength. Ms. Owens did not assess Student in the areas of reading fluency, passage comprehension, or writing samples, as she believed these areas to be beyond Student's ability at the time. Ms. Owens also noted Student's issues with self-esteem and work fluency.

74. Cabrillo's school nurse Greg Regan received a bachelor of science in Nursing in 2013, became a Registered Nurse in 2013, a Public Health Nurse in 2014, and received a School Audiometrist Certificate in 2014. He prepared a summary of Student's medical issues and list of supports that she may need in school as part of the multidisciplinary assessment. These included scheduling rest breaks, oral responses and dictation, decreased written demands, peer buddy to assist with materials, opening doors, a special chair or pad for comfort for back pain from neuropathy, preferential seating for vision issues, and physical activity limitations related to neuropathy and risk of stroke. He concluded that Student was medically fragile based upon her risk of stroke and medical history.

75. Cabrillo's assessment findings were consistent with the conclusions and recommendations in Dr. Ambler's April 2013 assessment and findings of subsequent providers. Cabrillo had notice of these deficits since early May 2013.

Occupational Therapy Report of January 28, 2015

76. Cabrillo retained Starfish Therapies to conduct an occupational therapy assessment of Student. Jesse McCormack, occupational therapist, conducted the assessment and prepared a report dated January 28, 2015. Student was referred due to difficulties with endurance during handwriting tasks in the classroom. Ms. McCormack interviewed Student's teacher at Arbor Bay School, observed Student in the clinic setting, and administered standardized testing in the areas of handwriting and visual motor integration.

77. Student's writing was assessed using the Print Tool test, which evaluates memory, orientation, placement, size, start, sequence, control, and spacing of the writing of capitals, numbers, and lowercase letters. She demonstrated low handwriting scores in the areas of orientation, size, and placement. During assessment, she required extended time and frequent movement breaks. Student's peripheral neuropathy affected her sitting posture, which, in turn, affected her endurance and participation in tasks.

78. The Beery Visual Motor Coordination test was used to assess Student's eye-hand coordination. Student scored in the very low range overall. Ms. McCormack concluded that Student required occupational therapy to support hand strength, endurance, attention, and handwriting skills. No testing was done in sensory processing. Again, Cabrillo had notice of these areas of need since early May 2013.

January 28, 2015 IEP Team Meeting

79. District team members gathered for the IEP team meeting to review assessments on January 28, 2015. Parents, vision impairment teacher Gail Gregg, Ms.

Choi, Mr. Regan, administrator Mrs. Ladd, Mrs. Owens, Ms. Bennett, Ms. McCormack, Dr. Ambler, general education teacher Mrs. Shue, and Ms. Raymond were at the meeting. Arbor Bay Academy teachers, Susan Rose and Jen Levy, attended telephonically.

80. According to Cabrillo, the purpose of the IEP was to hold a triennial meeting and review additional testing. Parents identified their educational concerns for Student in the areas of executive functioning, working memory, math computation, decoding, spelling, fine motor, cognitive fatigue, endurance, and resiliency.

81. Cabrillo's assessment team reviewed their findings in psychoeducational testing, speech and language, occupational and physical therapy, health, vision, and academics. Student remained eligible for special education services under the categories of traumatic brain injury and other health impairment. Goals were developed in the areas of math, English Language Arts, and occupational therapy. Mrs. Owens indicated she would propose a number sense goal after "further assessment."

82. Cabrillo offered Student placement in a special day class for 1500 minutes per week with group occupational therapy for 30 minutes per week; extended school year services to address regression issues; and accommodations for use of visual supports, preferential seating, frequent breaks, chunking of tasks, extended time to complete tasks, access to adult support, allowing Student to remove her shoes due to neuropathic pain, limit physical activity, and/or provide breaks for certain physical activities.

83. Dr. Ambler expressed concern over Student's peer relationship skills. Cabrillo explained that this would be addressed in yet another assessment. Cabrillo presented an assessment plan in the areas of adaptive physical education and behavior, which Father signed and returned at the meeting.

84. Ms. Raymond adequately addressed Father's concern over the grade level placement. Student had been attending Arbor Bay Academy in the first grade, but

Cabrillo was offering placement in a special day class in second grade. Father was concerned about the impact of placement on Student's self-esteem. Ms. Raymond explained that curriculum would be differentiated to meet Student's academic ability and shared the importance of having opportunities to interact with typically developing peers.

85. However, Cabrillo did not address Student's need for a health plan nor health care related services in the IEP. No mention was made of Student's signs of neurologic episode or signs of stroke in general. There was no mention of what would be needed in order to address Student's medical needs in case of emergency, nor what steps would be taken to transport Student to an appropriate hospital within an hour.

Adaptive Physical Education Assessment of March 2015

86. Adaptive physical education teacher Joan Fulp assessed Student in the area of adaptive physical education. Ms. Fulp has 40 years of experience as a physical educator, with 23 of those years working specifically with preschool to high school students with special needs. She has been a credentialed adaptive physical education teacher since 1996. She had extensive experience assessing students, consulting with staff, attending IEP team meetings, and working with students in adaptive physical education.

87. Ms. Fulp's assessment included observation of Student and administration of the Test of Gross Motor Development. The test was rated on quality of movement, rather than speed, distance, or quantity, and measures locomotor and object control skills. Student's motor skills could be directly affected by the known health problems of chronic pain in Student's hands, fingers, and feet and the left eye cataract. Student started to shut down when the ball skill portion of the testing became too difficult. Student's motor skills were delayed in all areas.

Behavior Intervention Services Assessment of March 2015

88. Ms. Puga observed Student at Arbor Bay School on February 25, 2015, and March 4, 2015, to determine what behaviors were being demonstrated in the school setting and whether recommendations could be developed to increase Student's social skills, coping skills, and academic participation. Ms. Puga reviewed prior assessments but did not conduct any formal testing.

89. Ms. Puga concluded that the "off task" and "shut down" behavior Student experienced at Charles Armstrong School had diminished after her placement at Arbor Bay Academy. Student no longer needed the behavior therapist, which had helped her at Charles Armstrong School. She recommended that several behavior strategies, which had been implemented at Arbor Bay Academy, be integrated into Student's IEP. She concluded that, as long as Student continued in a small structured setting with academic assignments modified to her level, formal behavioral intervention services were not required.

March 27, 2015 IEP Team Meeting

90. Cabrillo held an amendment IEP team meeting on March 27, 2015, to review the most recent assessments. Ms. Fulp, Ms. Puga, Ms. Reynolds, Ms. Choi, and Father attended. According to Ms. Fulp, Student demonstrated areas of need in gross motor abilities. She drafted two goals, one for throwing and catching (using an oppositional step from throwing arm while focusing on a target) and another for ball skills (bouncing a ball to herself, to work on using enough force to bounce and increase ability to catch). Cabrillo offered adaptive physical education services for 30 minutes per week to address motor difficulties. Ms. Fulp indicated she might ask for an addendum to add one-on-one pull out time if she determined Student required more intensive service after working with her.

91. Ms. Puga's concluded, based on her observations of Student in her then-current placement at Arbor Bay Academy, that Student did not need behavior services.

DR. NICOLAIDES

92. Dr. Nicolaides is an Assistant Professor in Residence at University of San Francisco. He obtained a bachelor of arts in Biology and doctor of Medicine. He is Board Certified in Pediatrics, Pediatric Hematology-Oncology and Neuro-Oncology.

93. At hearing, Dr. Nicolaides persuasively described the resulting effects of Student's intensive course of medical treatment, including a disruption of cognitive development, loss of abilities affecting the capacity to learn and retain information over time, and risk of stroke.

94. Because of Student's radiation therapy to the brain, her medical team regularly conducted MRIs to monitor tumor regrowth and other abnormalities. In January 2013, Student was diagnosed as having occlusion or stenosis of cerebral arteries. This narrowing of the blood vessels created a life-long, moderate risk of stroke in Student, increased by 46% compared to the general population.

95. In the event of a stroke, Student must receive medical care within one hour. Such care would consist of an urgent evaluation to determine the extent of the stroke, including either a CAT scan or an MRI, and an angiogram. If a stroke occurred, Student would need catheterization of the blood clot that caused the stroke, or might need surgery. She would need to be taken to a hospital that can address pediatric stroke. Dr. Nicolaides described the time delay by saying, "time is brain." He explained, the longer one waits to treat the stroke, the more of the brain is deprived of oxygen and will die. Timing is critical.

96. Dr. Nicolaides was not aware of any hospitals a safe distance from Half Moon Bay, the location of El Granada Elementary School, which could address pediatric stroke. The closest hospitals to treat Student would be UCSF or Stanford. If Student

attended a school in Half Moon Bay, there would be risks associated with the timing factor. However, these risks could be addressed by having a one-on-one aide monitoring any change in Student's neurological status. The people working with Student would need to know what signs to look for in her and be trained to recognize signs of a stroke. The person would need a long track record with Student to be able to recognize what is a sign in her versus other students. She would require closer monitoring than someone sitting in the back of the class watching her, as the neurological changes can be subtle.

97. Cabrillo never contacted Dr. Nicolaides to discuss his recommendations of placement and services pertaining to Student's increased risk of stroke. Cabrillo's IEPs never addressed one-on-one monitoring of Student's neurological status, or offered any supports or services to identify signs of a stroke, and did not identify action steps to transport Student to an appropriate medical facility in case of stroke.

98. Based upon all of the assessments and informal screenings of Student from October 2013 through March 2015, Student was eligible for special education services as a child with traumatic brain injury and other health impairment. She required an educational placement, supports, and services that addressed her unique academic, behavioral, and medical needs. Her district of residence, Cabrillo, had notice of Parents' request for an evaluation of eligibility, and of Student's suspected needs, as early as March 2013 and Cabrillo did not even informally assess her until after October of 2013, despite Parents' multiple requests. Cabrillo had still not fully assessed all of Student's suspected needs, through the time of filing the complaint in March 2015. Parents offered Cabrillo private assessments, which Cabrillo's IEP teams considered during the 2013 – 2014 and 2014 – 2015 school year. With Cabrillo's knowledge, Parents privately placed Student at their own expense because Cabrillo did not timely assess Student or

offer Student an appropriate placement or services that addressed all of her unique needs.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁴

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

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

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic, and functional goals related to those needs, and 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 "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit," or "meaningful educational benefit," all of these phrases

mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 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) and (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. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, Student has the burden of proof on all issues.

ISSUE 1(A): CABRILLO'S RESPONSE TO INITIAL REQUEST FOR ASSESSMENTS AND IEP

5. Student contends Cabrillo should have assessed her and convened an IEP team meeting after Parents presented written requests to Cabrillo seeking a referral for special education in March 2013, April 2013, May and June 2013. Cabrillo contends it was not required to assess Student and offer a FAPE because the district of location, not the district of residence, had responsibility for initial eligibility assessment and Parents never intended to enroll in Cabrillo in any event.

6. The "child find" provisions are designed to assist school districts in locating pupils with special needs in private schools whose parents may not be aware that their children are entitled to a FAPE. (Ed. Code, §§ 56300, et seq.) However, once the

student is "found" the district of residence must offer student a FAPE (34 C.F.R. §§ 300.101, 300.201; Ed. Code, § 56302), while the district of location may be required to offer a service plan. (See Ed. Code, §§ 56172-56174.5.)

7. A child is "found" when the district of location determines that a child needs special education and related services. (71 Fed. Reg. 46593 (August 14, 2006).) A child is also "found" where Parents seek assessment from the district of residence. (*Letter to Eig* (OSEP 2009) IDELR 136 [noting that the IDEA requires districts to ensure that all resident children with disabilities, including children who attend private schools, are identified, located, and evaluated.])

8. The district of residence and district of location each have a separate duty to assess if a child's parents approach that district seeking assessment. The Federal Regulations have considered the precise situation where parents simultaneously seek assessment from both the district of location and district of residence and found that nothing in the IDEA prohibits this practice. (71 Fed. Reg. 46593 (August 14, 2006).)

9. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that District knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education*. (3rd Cir. 1993) 993 F.2d 1031, 1041.)

10. California regulations make it clear that: "[a]ll referrals for special education and related services shall initiate the assessment process and shall be documented." (Cal. Code Regs., tit. 5, § 3021, subd. (a).) The school district must provide the child's parent with a proposed assessment plan within 15 days of the referral for assessment, not counting days such as school vacations. (Ed. Code, § 56321, subd. (a).) Once the parent signs his or her consent to the assessment, the school district is required to complete the assessment and hold an IEP team meeting to review the

assessment within 60 days of receiving parental consent. (Ed. Code, § 56302.1, subd. (a).)

11. There are two parts to the legal analysis of a school district's compliance with the IDEA: (1) whether the district has complied with the procedures set forth in the IDEA and (2) whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra*, 458 U.S. 176 at pp. 206-207.) Procedural flaws do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subds. (f) and (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*).

12. Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Haw. 2001) 158 F.Supp. 2d 1190, 1196; *Park v. Anaheim Union High School Dist., et.al.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

13. The IDEA does not require parents to enroll children with disabilities in public schools. (34 C.F.R. § 300.134.) A school district cannot refuse parents' request for assessment of a private school student simply because parents would not enroll student first. (*Moorestown Township Board of Education v. S.D. and C.D.* (D.N.J. 2011) 57 IDELR 158.) Districts have a duty to evaluate a child and propose an IEP when parents seek assessment. (*District of Columbia v. Oliver* (D.D.C. 2014) 62 IDELR 293; *District of Columbia v. Wolfire* (D.D.C.2014) 62 IDELR 198.)

Analysis of Issue 1(a)

14. In this case, Student established by the weight of the evidence that in

March 2013 Cabrillo was aware that she was a resident of Cabrillo, when Belmont notified Cabrillo of its intent to assess her for eligibility, and when Father requested an evaluation of Student by Cabrillo. Other than offering evidence of its own confusion over whose responsibility it was to assess Student, as the district of residence, Cabrillo failed to offer any credible evidence supporting a finding that it was justified in delaying its assessments of Student to determine whether she was eligible. As a result, Cabrillo procedurally violated the IDEA; deprived Parents of the opportunity to participate in the development of her educational program; and denied Student a FAPE by not finding her eligible for special education services in a timely manner, and by not holding an IEP meeting to offer her an appropriate placement and educational program.

15. Cabrillo's reliance on SELPA policies to avoid assessing Student was misplaced. The policies require the district of location to conduct "an appropriate and timely initial assessment of the child's needs, if a current assessment has not been performed by the DOR."

16. Cabrillo's contention that Parents never expressed their intent to enroll Student in Cabrillo is not supported by the weight of the evidence and does not excuse Cabrillo from its legal obligation to assess her for eligibility once it is aware of her potential needs. Parents reached out to Cabrillo seeking assistance in the form of assessments and an IEP meeting to determine the appropriate placement. Cabrillo's arguments attempting to shift the responsibility onto Parents are not persuasive.

17. Cabrillo's contention that because Father signed Belmont's proposed services plan Parents did not want a determination of special education eligibility or an IEP is equally unavailing and not supported by any credible evidence. Parents credibly testified about their confusion regarding which district was responsible to assess their daughter and offer an IEP, and Cabrillo did nothing to resolve their confusion. Parents' emails requesting assessment confirmed this, as did the notes of the June 6, 2013 team

meeting with Belmont. They were confused about why a service plan was offered when they were seeking an IEP. At every step of the process, they continued to seek an appropriate placement for their child from Cabrillo and from Belmont. Parents went so far as to seek an interdistrict transfer so that Belmont could offer an IEP, rather than just an ISP, in light of Cabrillo's continued delay in holding an IEP meeting.

18. Cabrillo's contention that Parents should have asked it to assess *instead of* Belmont is also without merit. Student conclusively proved that Parents asked Cabrillo to assess on several occasions. Cabrillo had an independent duty to assess Student upon Parents' referral.

19. Cabrillo failed to timely assess Student and offer an IEP upon initial referral of March 5, 2013. Instead, it forced Parents to go through the process of obtaining an eligibility assessment with Belmont when Belmont could only offer them an ISP. The evidence showed that the Belmont assessment was for purposes of eligibility only and that Cabrillo could not get a full and accurate picture of Student's needs without conducting further assessments. Because of this, Cabrillo's initial IEP in October 2013 did not identify each area of Student's need and did not provide a placement and services appropriate to meet her needs.

20. Cabrillo's failure to timely assess and offer an IEP substantially impeded parental participation in the decision making process and deprived Student of a FAPE until assessments were completed and an offer of a FAPE was made at the IEP team meeting of January 28, 2015. Student's remedies will be discussed below.

ISSUE 1(B): ASSESSING IN ALL AREAS RELATED TO SUSPECTED DISABILITY

21. Student contends she was denied a FAPE because Cabrillo failed to conduct timely and appropriate assessments in all areas of suspected disability, including social, emotional, behavioral, assistive technology, physical therapy, occupational therapy, and adaptive physical education throughout all relevant time

periods. Cabrillo contends it was not legally required to conduct the initial assessment, that its initial October 4, 2013 IEP was appropriate based on Belmont's assessment, and that Student was appropriately assessed during all relevant time periods.

22. Assessments are required in order to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b)(2), (c)(4); Ed. Code, § 56320, subds. (e), (f).)

23. The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

24. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.)

Issues 1(b)(i), (iv), and (v)

25. Student met her burden on sub-issues 1(b)(i), (iv), and (v) by establishing that Cabrillo had sufficient information on Student's needs to assess Student in all areas of suspected need, which it failed to do in a timely or comprehensive manner.

26. Cabrillo had knowledge of Belmont's May 2013 psychoeducational, academic, and speech and language assessments. The psychoeducational assessment

tested Student's intellectual capacity and executive processing. However, Belmont's assessment was not comprehensive. It was performed to determine eligibility, not IEP services, as Belmont could not offer Student an IEP. Belmont's assessments identified areas of need in verbal recall, attention, stamina, impulsivity, participation, and work effort and found Student eligible for special education as a student with traumatic brain injury and other health impairment. Areas of concern were also noted in learning behaviors, fatigue, fine motor and fluency, processing speed and inconsistent demonstration of skills from day to day. Parents also informed Cabrillo of their concern regarding risk of stroke, behavior and peer relations.

27. Cabrillo also had Dr. Ambler's report of April 2013. Dr. Ambler discussed similar areas of need as found in the Belmont report and recommended an occupational therapy assessment to address fine motor deficits. The report also identified social-emotional needs and counseling needs. Dr. Nicolaides May 22, 2013 letter informed Cabrillo of Student's high risk of stroke and neuropathy affecting fine motor skills.

Issue 1(b)(i): Behavior, Social-Emotional Assessments

28. Cabrillo has never formally assessed Student's behavior or social emotional needs. Cabrillo had notice by spring 2013 that one of Student's greatest and consistent areas of need was behavior. Student has been diagnosed with Post Traumatic Stress Disorder. As a result, when faced with difficult or non-preferred activities she frequently engages in protest and shut down behaviors. Student changed schools from Belmont Oaks to Charles Armstrong School and then to Arbor Bay because the schools were eventually unable to adequately address behavior needs.

29. Student's social-emotional development has been in lock step with her behavioral development. When frustrated, Student engaged in maladaptive behaviors with peers. Because she was in and out of hospitals during much of her very early childhood, she developed relating skills with adults, but not with peers. She had

required social skills intervention in every private placement she has been in since she started school.

30. Parents signed an assessment plan for an adaptive behavior assessment on October 4, 2013, at the end of Cabrillo's initial IEP team meeting. Instead of a formal assessment, Ms. Puga conducted an informal observation at Charles Armstrong School. She did not recommend services by Cabrillo, as she believed she conducted the assessment for use by Charles Armstrong School. Meanwhile, teachers at Charles Armstrong School were reporting that, although Student's behaviors had been improving, they were still implementing several types of behavior intervention techniques in order to meet Student's needs.

31. Because the family and Dr. Ambler continued to raise the issue of behavior, Cabrillo offered another assessment plan for behavior at the IEP team meeting of January 28, 2015. It was signed by Parents that day and Student was observed in late February and early March. However, as of the March 27, 2015 IEP team meeting, Cabrillo had not conducted any formalized testing.

32. Cabrillo's failure to assess in the areas of behavior, social, and emotional needs denied Student a FAPE as the IEPs developed by Cabrillo offered no services or supports to address Student's numerous documented needs in these areas.

Issues 1(b)(ii) and (iii): Assistive Technology and Physical Therapy Assessments

33. There was no persuasive testimony that Student required supports and services in the areas of assistive technology or physical therapy during the relevant time periods. Neither Dr. Ambler nor any of Cabrillo's providers recommended assessments in these areas. Cabrillo was not required to conduct assessments in assistive technology or physical therapy in order to provide Student with a FAPE. Student did not meet her burden on these sub-issues.

Issue 1(b)(iv): Occupational Therapy

34. Cabrillo was aware of Student's peripheral neuropathy and fine motor issues in March 2013. However, Cabrillo did not assess Student in occupational therapy until February 2014, resulting in the addition of occupational therapy services for 30 minutes per week at the March 17, 2014 IEP. A reassessment was conducted in January 2015. Student obtained academic benefit from 30 minutes per week of push in, group occupational therapy at Arbor Bay Academy. However, she also received sensory processing supports to help with alertness, attention and core strength.

35. Neither the February 2014 nor January 2015 occupational therapy assessments addressed Student's sensory processing deficits. Student was known to be disturbed by loud sounds and seek vestibular input. Dr. Ambler's assessment identifies needs in the areas of auditory and vestibular processing.

36. Cabrillo's failure to conduct an occupational therapy assessment from March 2013 through February 2014 resulted in a denial of FAPE through March 17, 2014, as Student was left without services to address her areas of need in fine motor skills. Once finally assessed, Cabrillo had still not addressed known areas of need in sensory processing. As such, Student carried her burden of proof on this issue.

Issue 1(b)(v): Adaptive Physical Education Assessments

37. Cabrillo was aware of Student's deficits in the areas of gross motor control, core weakness and issues with neuropathy, which affected her ambulation. These areas of need were identified in Dr. Ambler's reports, which were provided to Cabrillo in the spring of 2013. Cabrillo did not conduct an adaptive physical education assessment until March 2015, resulting in an addition of adaptive physical education services to Student's IEP of March 27, 2015. Cabrillo's failure to conduct an appropriate assessment in adaptive physical education resulted in the denial of a FAPE from March 2013 through March 27, 2015.

ISSUE 2: PRIOR WRITTEN NOTICE

38. Parents contend Cabrillo failed to provide prior written notice when it refused to assess Student in March, April, May, and June of 2013, and when it thereafter referred Parents to Belmont for assessment. Parents contend Cabrillo failed to provide prior written notice when it offered one IEP placement or, alternatively, an ISP in October 2013 and March 2014, and failed to describe the data upon which Cabrillo relied to make its placement offers. Cabrillo contends that Belmont was responsible for Student's initial assessment and that Belmont did assess Student in May 2013.

39. Prior written notice must be given by the public agency to the parents of an individual with exceptional needs "upon initial referral for assessment, and a reasonable time before the public agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child." (Ed. Code, § 56500.4, subd. (a); see also, 20 U.S.C. 1415(b)(3) and (4) and (c)(1); 34 C.F.R. 300.503.) Failing to take action in response to a recommendation or request for assessment is tantamount to refusing to assess. (See, *Compton Unified School Dist. v. Addison, et al.* (9th Cir. 2010) 598 F.3d 1181.)

40. A prior written notice must contain: (1) a description of the action proposed or refused by the agency; (2) an explanation for the action; and (3) a description of the assessment procedure or report which is the basis of the action. (Ed. Code, § 56500.4, subd. (b).) An IEP document can serve as prior written notice as long as the IEP contains the required content of appropriate notice. (71 Fed.Reg. 46691 (Aug. 14, 2006).) The procedures relating to prior written notice "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." (*C.H. v. Cape Henlopen School Dist.* (3rd Cir. 2010) 606 F.3d 59, 70.) When a failure to give proper prior written notice does

not actually impair parental knowledge or participation in educational decisions, the violation is not a substantive harm under the IDEA. (*Ibid.*)

Issue 2(a) and (b): Response to Referral for Initial Assessment

41. Student met her burden on these sub-issues. Cabrillo failed to provide prior written notice of its refusal to initially assess Student beginning in March 2013, through June 2013. Cabrillo merely informed Parents that Belmont would conduct the initial assessment. Parents were not informed of any legal or factual basis for Cabrillo's opinion. This left Parents confused and wondering why Student was not offered an IEP by Belmont in June 2013, and why Cabrillo did not offer an IEP until October 2013. Cabrillo's failure to provide prior written notice was a procedural violation of the IDEA. The violation was significant because it resulted in impeding Parents' participation in the decision-making process and denied Student a FAPE by delaying the development of an IEP for several months.

Issue 2(c) and (d): October 4, 2013 and March 17, 2015 Placement Offers

42. Parents contend that Cabrillo failed to provide prior written notice when it offered one IEP placement or, alternatively, an ISP in October 2013 and March 2014, and failed to describe the data upon which Cabrillo relied to make its placement offers.

43. Student failed to carry her burden of proof that prior written notice was required as to the October 2013 and March 2014 placement offers. Cabrillo was not required to provide a separate prior written notice letter regarding the October 2013 and March 17, 2014 IEP offers because the IEPs provided Parents with such notice. Parents attended the IEPs, provided input, and had placement offers explained to them. Nothing more was required.

ISSUE 3: PROCEDURAL VIOLATIONS

Issue 3(a) and (b): (Continuum of Placement Options and Predetermination)

44. Student contends that Cabrillo came to each IEP with a predetermined placement in mind and would not consider other options specifically a placement located "over the hill" closer to where Parents work. Parents preferred a placement closer to their work so they could help monitor Student's neurological status in case a stroke was suspected. Cabrillo contends it was not required to offer a placement near Parents' work and that it had a sufficient variety of placement options available to Student at each IEP meeting.

45. Education Code section 56360 requires that the SELPA must ensure that a continuum of alternative programs is available to meet the needs of individuals with exceptional needs for special education and related services. (34 C.F.R. § 300.115(a) (2006); Ed. Code, § 56360.) This continuum must include instruction in regular classes, a resource specialist program, designated instruction and services, special classes, nonpublic, nonsectarian school services, state special schools, instruction in settings other than classrooms where specially designed instruction may occur, itinerant instruction in the classroom, resource rooms and other settings where specially designed instruction may occur and instruction using telecommunication and in the home, hospitals, and other institutions. (34 C.F.R. § 300.115(b)(1) (2006); see also Ed. Code, §§ 56360, 56361.) There is no requirement that the IEP team members discuss all options, so long as alternative options are available. A school district is only required to consider those placements in the continuum that may be appropriate for a particular child. (See *L.S. v. Newark Unified School Dist.* (N.D.Cal, May 22, 2006, No. C 05 03241 JSW) 2006 WL 1390661, p. 6.)

46. For IEP team meetings, predetermination occurs when an educational

agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a “take it or leave it” offer. (*JG v. Douglas County School Dist.*, (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

47. Although school district personnel may bring a draft of the IEP to the meeting, the parents are entitled to a full discussion of their questions, concerns, and recommendations before the IEP is finalized. (Assistance to States for the Education of Children with 64 Fed.Reg. 12406, 12478 (Mar. 12, 1999).) However, a school district has the right to select a program and/or service provider for a special education student, as long as the program and/or provider is able to meet the student’s needs; IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d 880, 885; *O’Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 503 F.Supp.2d 1206, 1216.) Nor must an IEP conform to a parent’s wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an “education . . . designed according to the parents “desire”]; citing *Rowley, supra*, 458 U.S. at p. 207.)

48. Cabrillo persuasively demonstrated that it had a continuum of placement options available for Student, including general education, resource specialist support, a variety of special day classes and supports and services for medically fragile students. Cabrillo was not required to offer a placement of Parents’ choosing. Student presented no evidence that Cabrillo failed to consider appropriate placements for Student, during any of the relevant time periods, even though Cabrillo did not agree to Parents’ request for a specific geographic location and even when it offered a general education

placement when Student clearly needed a more structured setting.

49. Further, Student failed to present evidence establishing that Cabrillo predetermined her IEPs. The evidence in this case demonstrated that Cabrillo came to IEP team meetings with draft IEPs, which is a common practice among districts for purposes of expediency. Nonetheless, Cabrillo considered parental input as reflected by additions and changes to areas of parental concern and request for various assessments. Parents credibly demonstrated that they brought up their concerns at the various meetings and these concerns were reflected in IEP team meeting notes. The evidence showed that Parents were involved in the IEP development process as participants throughout the meetings occurring on October 4, 2013, March 17, 2014, November 19, 2014, and January 2015, as amended on March 27, 2015. Student did not meet her burden on this sub-issue.

Issue 3(c): Formal, Specific Written Offer in IEPs of October 4, 2013 and March 17, 2014

50. Student contends Cabrillo failed to make specific and clear written offers of FAPE in its IEPs of October 4, 2013, and March 17, 2014. Cabrillo contends it offered a single, specific program in each of the IEPs and thereby fulfilled its legal obligations.

51. The Ninth Circuit has observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. A district has an obligation to make a formal written offer in the IEP that clearly identifies the proposed program. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d. 431, 459-460.)

However, a school district is not required to specify the exact location of the educational placement. (*T.Y. v. New York City Dept. of Educ.* (2nd Cir. 2009) 584 F.3d 412, 420; *Deer Valley Unified School Dist. v. L.P. ex rel. Schripsema* (D.Ariz. 2013) 942 F.Supp.2d 880, 889.)

52. A formal written offer provides parents with the opportunity to decide whether the offer of placement is appropriate and whether to accept the offer. Even if a district is convinced that a parent will not agree to the district's proposed IEP, the district must still hold the meeting, give the parent the opportunity to discuss the placement and services, and make the offer. A school district cannot escape its obligation to make a formal placement offer on the basis that the parents had previously "expressed unwillingness to accept that placement." (*Union Sch. Dist. v. Smith, supra*, 15 F.3d at p. 1526.)

53. Cabrillo's October 4, 2013 IEP offered Student general education placement with 480 minutes per week of resource specialist services at El Grenada. The March 17, 2014 IEP offered the same placement and services with the addition of 30 minutes of occupational therapy per week, at El Grenada School.

54. Cabrillo made clear written offers specifying the location, frequency, and duration of services. Student did not meet her burden of proof on this sub-issue.

Issue 3(d): Accurate Present Levels of Performance and Appropriate Goals

55. Student contends that goals in each of her IEPs are inadequate due to the lack of appropriate assessments to identify areas of need and present levels of performance. Further, Student contends the academic goals in the January 2015 IEP had present levels far above what Student was able to do at the time and were, therefore, deficient. Cabrillo contends that all goals were designed to provide Student with educational benefit and tailored to her areas of need.

56. Once a student has been determined eligible for special education

services, an IEP must be developed according to the unique needs of the child. The IEP team must consider the results of the most recent assessment of the pupil. (20 U.S.C. § 1414(c)(1)(A); Ed. Code, § 56341.1, subd. (a)(3).) 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)(i)(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)(i)(III); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

ISSUE 3(D)(I), (A)-(D): ACADEMIC GOALS

57. The October 4, 2013 IEP contained four academic goals, two for reading and two for math. The present levels of performance on all four goals were taken from the Woodcock Johnson II assessment. The math goal present levels stated: “Broad Math Scores—Low Range.” The reading goals stated, “Broad Reading Scores—low to very low range.”

58. Ms. Owens and Dr. Ambler both persuasively demonstrated that the present levels of performance in each of the four goals did not give an indication of what the Student could do in relation to the goal. They could not tell from a Woodcock Johnson score whether Student knew, for example, a particular number of site words (reading goal) or could perform 10 addition and subtraction word problems (math goal). In fact, Ms. Owens did not think that Student could perform a single word problem in October 2013.

59. These present levels were patently deficient. They did not identify a specific need, define a target skill, or provide any specific baseline data. There is no means by which a teacher could determine Student's starting point for working on a goal and there was no relation between the present levels and the goals. For these reasons, Cabrillo failed to develop appropriate academic goals in the October 2013 IEP. Student prevailed on Issue 3(d)(i)(A).

60. The amendment IEPs of March 17, 2014, and November 19, 2014, contained the same four goals as the October 4, 2013 IEP, and are therefore deficient for the reasons identified above. As such, Student prevailed on sub-issues 3(d)(i)(B) or (C).

61. The January 28, 2015 IEP contained new goals in the areas of reading, writing, and math, based on Cabrillo's recent assessments. Ms. Owens and Ms. Choi testified persuasively that these goals were appropriate for Student and would allow receipt of educational benefit. For these reasons, Student did not prevail on Issue 3(d)(i)(D).

ISSUES 3(D)(II)(II)-(IV): BEHAVIOR, SOCIAL, AND EMOTIONAL GOALS

62. Cabrillo neither assessed nor developed goals in the areas of behavior, social, or emotional issues for any relevant time period. Student's needs in these areas are well documented, specifically in attention to task, compliance with non-preferred activities and increasing positive peer interactions. Student's privately retained behavior intervention therapist implemented goals in these areas. Each of Student's IEP's and nearly all of the assessments conducted identified these ongoing issues. Further, Dr. Ambler persuasively demonstrated that these are ongoing areas of need for Student, in addition to coping skills to deal with frustration and task tolerance, self-help skills, and social skills, which could be addressed through a variety of interventions, including psychological counseling. As Cabrillo did not conduct any formal assessments in these areas, it was unable to credibly dispute Student's evidence.

63. For these reasons, Student demonstrated that Cabrillo failed to develop goals in all areas of Student's needs, thereby depriving Student of educational benefit and denying Student a FAPE in the IEPs of October 4, 2013, through January 28, 2015, as amended March 27, 2015.

ISSUE 3(D)(V), (A)-(D): GROSS MOTOR GOALS

64. Cabrillo did not offer goals addressing gross motor deficits in the IEPs of October 4, 2013, March 17, 2014, November 19, 2014, and January 28, 2015. Gross motor skills were an identified area of deficit for Student at all relevant time periods. The failure to address this area by developing goals denied Student a FAPE in the relevant IEPs. Therefore, Student prevailed on Issue 3(d)(v), sub-issues (A) through (C).

65. After Ms. Fulp's adaptive physical education assessment, two new goals were added to the IEP at the amendment meeting of March 27, 2015, (throwing and catching; bouncing a ball and catching it). The baselines identify specific areas of need that are directed towards a target skill. Ms. Fulp persuasively demonstrated that these goals were developmentally appropriate for Student and would allow her to make educational progress. For these reasons, Student did not meet her burden of demonstrating the gross motor goals in the March 27, 2015 IEP amendment were insufficient to offer Student a FAPE. As such, Student did not prevail on sub-issue 3(d)(v)(D).

ISSUE 3(D)(VI), (A)-(D): FINE MOTOR GOALS

66. Cabrillo first offered goals addressing Student's fine motor needs in the March 17 2014 IEP. The goals were based upon the recent occupational therapy assessment of Ms. Nahum and, though they were not perfectly drafted, the weight of the evidence showed that the goals addressed an area of need and would provide some educational benefit to Student.

67. Another occupational therapy assessment was done in January 2015, resulting in a slight modification of one of the prior goals. Again, the goals addressed an area of need and would provide some educational benefit to Student.

68. For these reasons, Student did not meet her burden of proof on this sub-issue.

ISSUE 4: SUBSTANTIVE FAPE

69. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

70. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.) To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-

disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56031.)

71. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the non-academic benefits of such placement"; 3) "the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 ("Rachel H.") [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050].)

72. If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication, instruction in the home or instruction in hospitals or institutions. (Ed. Code, § 56361.)

73. As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 209; *Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992.) The methodology used to implement an IEP is left to the school district's discretion so long

as it meets a child's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley, supra*, 458 U.S. at p. 208; *Adams, supra*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick School Comm.* (1st Cir. 2004) 361 F.3d 80, 84.) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. 176, 208.)

74. If the IEP team determines that a student needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the student to receive a FAPE, the IEP team, "shall include a statement to that effect in the pupil's individualized education program." (Ed. Code, § 56341.1, subd. (c).)

75. Related services include school health services, school nurse services, and diagnostic and evaluative medical services. (20 U.S.C. § 1401(a); 34 C.F.R. § 300.34(a); Ed. Code 56363.) School nurse services are services provided by a qualified school nurse. (34 C.F.R. § 300.34(c)(13). School health services are services that may be provided by either a qualified school nurse or other qualified person. (*Ibid.*) School health services or school nurse services needed by a student who is medically fragile, must be provided as indicated in the IEP. (*See*, 71 Fed.Reg. 46,574 (2006).)

76. In order to meet the needs of medically fragile students, districts may seek an independent medical reevaluation of the student to resolve conflicting and incomplete information about the student's condition. (*See Shelby S. v. Conroe Indep. Sch. Dist.* (5th Cir. 2006) 45 IDELR 269, cert. denied, 109 LRP 47876, 549 U.S. 1111 (2007); and *Harrison Twp. Bd. of Educ.* (SEA NJ 2013) 11 ECLPR 79.)

77. State and federal law requires school districts to address behavior problems that affect the education of the child with a disability or of other students. An IEP team must consider whether a child's behavior impedes his or her learning or that of

others, and if the team determines that it does, the team must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subds. (b)(1) and (c).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R V Sch. Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028; *County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-1468; *San Rafael Elem. Sch. Dist. v. Cal. Special Educ. Hearing Office* (N.D. Cal. 2007) 482 F.Supp.2d 1152, 1161-1162; *Escambia County Bd. of Educ. v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1265.)

78. Legal Conclusions 1- 4 are incorporated by reference.

Issue 4(a)(i), (ii), and (iii), (a)-(d): Behavior, and Social-Emotional Development

79. Student persuasively demonstrated that Cabrillo denied Student a FAPE by failing to assess and provide supports and services in the areas of behavior and social-emotional development. The January 2015 IEP was the first IEP to offer supports in the form of accommodations and modifications to Student. These supports addressed Student's needs in the areas of fatigue and peripheral neuropathy. However, there were no positive behavioral supports or reinforcers that would support Student's known needs to avoid shutting down due to frustration or being overwhelmed, task avoidance, and no supports or services to address the development of coping skills, social skills or self-help skills.

80. For these reasons, Cabrillo denied Student a FAPE by failing to offer an appropriate program that addressed Student's areas of behavioral, social and emotional need.

Issue 4(a)(iv), (a)-(d): Occupational Therapy

81. Legal Conclusions 25 through 27, and 34 through 36 are incorporated by reference.

82. Cabrillo had no goals in place to address Student's fine motor occupational therapy needs until the March 17, 2014 IEP. The IEP's offer no accommodations or modifications to address occupational therapy needs until January 28, 2015. The January 2015 IEP provides for frequent breaks to address attention issues and taking off shoes to address peripheral neuropathy.

83. Further, none of the IEP's addressed Student's vestibular and auditory processing needs, which impacted her attention, alertness, focus, and stamina. In contrast, Arbor Bay Academy implemented activities such as swinging, spinning, sliding, and rocking, among others, to address these areas of need.

84. Because Cabrillo has yet to identify and address each of Student's areas of need in occupational therapy, it has denied Student a FAPE and Student has prevailed on this sub-issue.

Issue 4(a)(v) and (vi), (a)-(d): Physical Therapy and Assistive Technology

85. Student did not meet her burden of proof that she required physical therapy in order to access her education. At the IEP amendment meeting of November 17, 2014, Ms. Callicote reported that Student was able to access the school campus appropriately. Student did not present evidence to the contrary.

86. Student also failed to carry the burden of proof on assistive technology. Though Student offered some evidence that an iPad, voice to text software or other technology might be helpful, Student did not show that such technology was required in order to obtain educational benefit from any of her IEPs.

Issue 4(a)(viii), (a)-(d): Medical Issues – Risk of Stroke

87. Student contends Cabrillo failed to offer appropriate supports and services to address her severe risk of stroke. Cabrillo contends that it has a school nurse who can train staff to recognize the signs of stroke. However, Cabrillo never identified any supports, services or training of staff to identify risks of stroke, in any of its IEP's. Mr. Regan considered Student to be medically fragile due to her risk of stroke. If Student attended El Granada, part of his duties included training staff to recognize the risk of stroke and put protocols in place for any health emergency that may have arisen at school. He was responsible for putting accommodations in place to help with medical emergencies at school. After the March 2015 IEP meeting, Mr. Regan discussed the stroke protocol with Father. However, it was not brought up during the meeting and nothing in the IEP alerted providers to Student's severe risk of stroke or warning signs of a stroke.

88. Dr. Nicolaide's testimony was persuasive on this issue. Student was, and would remain, at a 46 percent increased risk of stroke over the general population. She required someone trained to recognize the signs of a stroke and subtler signs related to her condition, in order to properly monitor her neurologic status while at school.

89. Dr. Nicolaides agreed that the school nurse likely could train personnel to properly keep an eye on Student. However, he believed that would require one-on-one attention and not just someone who was in the room attending to other children. He also persuasively demonstrated that Student would need to be transported to a pediatric stroke unit within one hour of an episode in order to diminish the risk of loss of life and loss of further brain function. This testimony was not credibly disputed.

90. Cabrillo failed to have a plan in place for Student identifying the need to quickly determine whether she was experiencing a neurological change that warranted calling for an ambulance for transport to a pediatric stroke center within one hour. None

of the IEP's identified the severity of the risk of stroke, the signs or symptoms of stroke, generally, or any signs or symptoms pertaining to Student, specifically. None of the IEP's provided for a one-on-one aide to monitor Student and made no other person responsible for monitoring Student's condition. They provided no related health services, no accommodations, modifications, or supports related to Student's moderate risk of stroke.

91. Given the potential for catastrophic results, Parents' concern over the lack of supports surrounding Student's risk of stroke was well founded. Dr. Nicolaides did not affirm that Student required placement closer to a pediatric hospital in order to receive a FAPE. However, the evidence established a direct correlation between the lack of supports in the IEP's and the need to be closer to an appropriate hospital, based on the time factor alone. Cabrillo could not establish how long it would take for staff to identify signs of stroke in Student, call an ambulance, have Student moved to where an ambulance could pick her up and take her to an appropriate hospital. The longer this process would take, the closer Student's placement would need to be to an appropriate hospital.

92. In *Glocester School Department* (SEA RI 12/28/09) 110 LRP 2792, the hearing officer found that the school district should have incorporated transportation recommendations for a medically fragile student with a seizure disorder into the IEP, including identifying personnel able to recognize the onset of student's seizures. The hearing officer found that, "without this vital knowledge, the Student is put at risk." Even where personnel were trained to identify the symptoms of stroke, there were "so many variables in transportation and communication within the school setting" that, leaving the process to chance, would put student's life at risk. The *Glocester* case also found that the least restrictive environment analysis must give way to a student's medical needs when life hangs in the balance.

93. If Cabrillo did not believe the extent of the stroke risk, it could have undertaken its own medical evaluation, but did not. Further, Cabrillo did not include Dr. Nicolaidis, or any other medical provider, in the process of developing a plan to address Student's significant needs in the area of stroke risk.

94. Cabrillo presented sufficient evidence to support their contention that they *could* put into place sufficient supports and services to identify Student's signs of stroke and a plan of action to have her transported to an appropriate hospital. However, they did not do that in any of their IEP's. As such, Cabrillo failed to offer a FAPE over all relevant time periods.

Issued 4(b): Adaptive Physical Education

95. Legal Conclusions 37 and 64 – 65 are incorporated by reference.

96. Student met her burden of proof on this issue. Dr. Ambler and Dr. Nicolaidis persuasively explained Students' deficits in gross motor control, core weakness, and issues with neuropathy that affected her ambulation. Cabrillo had notice of these issues as early as May 22, 2013, from Dr. Nicolaidis' letter, and from Parents' input at the October 2013 and November 2013 IEP meetings. Cabrillo's adaptive physical therapy evaluation in March 2015 confirmed that Student continued to have gross motor delays in all areas, likely related to her prior medical condition and treatment. Cabrillo failed to identify these needs until the IEP of March 27, 2015. As such, Cabrillo denied Student a FAPE in the November 19, 2014 and January 28, 2015, as amended March 17, 2015 IEPs.

REMEDIES

1. Student requests reimbursement for tuition at Charles Armstrong School School from mid-2013 through November 2014 and from Arbor Bay Academy from December 2014 through the end of the 2014 – 2015 school year. Student also seeks

reimbursement for assessments conducted on her behalf, in light of Cabrillo's failure to conduct appropriate assessments over an extended period of time. Cabrillo argues that Student did not provide 10 day's written notice of her disagreement with the offer of FAPE at the most recent IEP and of her intent to enroll in a private placement.

2. Parents may be entitled to reimbursement for placing Student at a private school where (1) Cabrillo did not make a FAPE available to Student prior to the placement; and (2) the private placement is appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); Ed. Code § 56175; see also *Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*) (reimbursement for unilateral private placement may be awarded under the IDEA when District's proposed placement does not provide a FAPE.) Parents can seek reimbursement for a private placement even where Student had never received special education services through the public school system. (*Forest Grove School Dist. v. T. A.* (2009) 557 U.S. 230 [129 S.Ct. 2484].)

3. Student's private placement does not have to meet the standards of a public school offer of a free appropriate public education, in order to be appropriate for reimbursement. (Ed. Code, §§ 56175, 56176; 34 C.F.R. § 300.148(c). However, the private placement must address student's needs and provide educational benefit to the student. (See *Target Range, supra*, at 960 F.2d at p. 1487.) The Ninth Circuit has clarified that a private placement need not furnish "every special service necessary to maximize [a] child's potential." (*C.B. v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3d 1155, 1159.) Instead, the private placement must provide "educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to benefit from instruction." (*Ibid.*)

4. As a general rule, the Federal Regulations require notice to a district of at least 10 business days "prior to removal of a child from public school" in order for the

child to obtain reimbursement for private tuition where there has been a denial of FAPE. (34 C.F.R. § 300.148.) The regulations are silent as to students who were never previously enrolled in a public school. However, in *Forest Grove*, the United States Supreme Court made it clear that reimbursement can be sought for children who had never received special education services at a public school. Where a district failed to provide a FAPE and the private placement was suitable, the hearing officer, "must consider all relevant factors, including the notice provided by the parents and the school district's opportunities for evaluating the child, in determining whether reimbursement for some or all of the cost of the child's private education is warranted." (*Forest Grove, supra*, 557 U.S. 230.)

5. Here, Student was enrolled in Charles Armstrong School before Cabrillo ever attempted to assess or hold an IEP team meeting. Further, Student provided notice to Cabrillo 11 business days prior to enrollment in Arbor Bay Academy. Parents were, at all times, cooperative in allowing Cabrillo to assess and expressed their reasons for disagreeing with Cabrillo's offer of FAPE at the IEP of November 19, 2014 prior to enrollment of Student at Arbor Bay Academy.

6. Student established by a preponderance of the evidence that Parents' decision to privately place her at Charles Armstrong School was appropriate as Cabrillo refused to assess and offer Student an IEP in a timely manner. Further, Student received small class and individual instruction with accommodations and modifications designed to address her needs in the areas of academics, fine motor, behavior, and social-emotional development. The placement was close to where Parents worked and to hospitals with pediatric stroke units, in case of medical emergency. The evidence established that Parents paid \$33,527.80 in tuition from July 2013 through November 2014. Parents made one round trip per school day to transport Student to and from Charles Armstrong School for 226 days of attendance at 31 miles each trip. Parents seek

reimbursement at the IRS mileage rate of .56, for a total cost of \$3,923.36. Cabrillo did not dispute these figures at hearing or in its closing brief.

7. Student established by a preponderance of the evidence that Parents' decision to privately place her at Arbor Bay Academy was appropriate in light of Cabrillo's continued failure to offer an appropriate placement and services through the time of filing the complaint, on March 11, 2015. Further, Student made progress in academics, social-emotional development, and behavior. The school was close to Parents' place of employment as well as to hospitals with pediatric stroke units, in case of medical emergency. The evidence established that Parents paid \$25,095.00 for tuition from December 2014 through the end of the 2014 – 2015 school year. Parents made one round trip per school day to transport Student to and from Arbor Bay for 132 days at 39 miles per round trip. Parents seek reimbursement at the IRS mileage rate of .575, for a total cost of \$2,960.10. Cabrillo did not dispute these figures.

8. Compensatory education is an equitable remedy designed to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Puyallup*)). There is no obligation to provide day-for-day compensation for time missed. The remedy of compensatory education depends on a "fact-specific analysis" of the individual circumstances of the case. (*Ibid.*) The court is given broad discretion in fashioning a remedy, as long as the relief is appropriate in light of the purpose of special education law. (*Burlington, supra*, 471 U.S. at p. 369.) An award of reimbursement may be reduced if warranted by an analysis of the equities of the case. The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Puyallup, supra*, 31 F.3d at pp. 1496-1498.)

9. Cabrillo failed to offer initial assessments and to timely assess in all areas of suspected disability. Therefore, Parents' decision to obtain independent assessments

in order to ascertain Student's needs was appropriate and reasonable. Parents obtained assessments from Dr. Ambler in April 2013 at a rate of \$3,037.50, October 2014 at a rate of \$2,337.50, and January 2015 at a rate of \$1,550. Further, Parents obtained an assessment from Therapeutic Learning Center, which provided behavior intervention services to Student while attending Charles Armstrong School. Cabrillo considered the assessments during IEP team meetings. Parents incurred expenses of \$1,200.00 for the initial behavior assessment and \$1,762.00 for behavior services. The evidence established that Parents paid for the assessments and services from Dr. Ambler and Therapeutic Learning Centers. Cabrillo did not dispute these figures at any time. Therefore, Parents are entitled to reimbursement.

ORDER

1. Within 45 days of the dates of this Decision, Cabrillo shall reimburse Student's Parents as follows:
 - a. \$33,527.80 for tuition at Charles Armstrong School from July 2013 through November 2014;
 - b. \$3,923.26, for mileage for transportation of Student to and from Charles Armstrong School School;
 - c. \$25,095.00 for tuition at Arbor Bay Academy from December 2014 through the end of the 2014 – 2015 school year;
 - d. \$2,960.10 , for mileage for transportation of Student to and from Arbor Bay Academy school;
 - e. \$6,925.00 for costs of assessments obtained from Dr. Ambler; and
 - f. \$1,762.00, for costs of assessment from Therapeutic Learning Center and \$1,200.00, for behavior services.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on Issues 1(a); 1(b)(i),(iv) and (v); 2(a) and (b); 3(d)(i)(A), (B) and (C); 3(d)(ii), (iii), and (iv); 3(d)(v)(A), (B), and (C); 4(a)(i), (ii), (iii), (iv) and (vii); and 4(b). Cabrillo prevailed on Issues 1(b)(ii) and (iii); 2(c) and (d); 3(a), (b), and (c); 3(d)(i)(D), 3(d)(v)(D) and 3(d)(vi); and 4(a)(v) and (vi).

RIGHT TO APPEAL

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

DATED: September 20, 2015

/s/

COLE DALTON

Administrative Law Judge

Office of Administrative Hearings