

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

OAH No. N 2005110837

vs.

COMPTON UNIFIED SCHOOL DISTRICT,

Respondent.

**DECISION**

Judith E. Ganz, Administrative Law Judge (ALJ) for the Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on March 21-24, 2006, in Compton, California.

Student was represented at the hearing by her attorney Cindy Brining. Ms. Brining was assisted by her associate, attorney Carol Graham on the first two days of hearing. Student's mother was also present on the first day of hearing. Attorney Daniel Gonzalez represented the District Compton Unified School District (District), and was assisted on several occasions by his associate, attorney Patrick Wang. The chair of the Department of Special Education for Dominguez High School, Stephon Brown, was also present on behalf of the District. Assistant Vice Principal Garry Robinson appeared on behalf of the District on the first morning of hearing.

Student testified on her own behalf and called the following witnesses: Student's mother; Dr. Janet Vivero, Shields for Families' clinical psychologist; Nicole Starr, Shields for Families' therapist; and Mary Tapia, Shields for Families' case manager. In addition, Student called the following District personnel as witnesses: Stephon Brown, special education coordinator; Dana Wolf, special day class teacher; Mjenzi Ujamaa, school counselor; Susanna Vargas, general education mathematics teacher; Kimberly Anderson-Jefferson, general education English/language arts teacher; Ricardo Olivares, resource specialist teacher; Julianne Beebe, general education English teacher; Diane Bilbrew, general education social studies teacher; Jerry Reed, general education art teacher; Cathalena Preston, health technician; Lupe Alvarado, program coordinator for children with special

needs; Gerard Sayles, general education social science teacher; and Brad Keller, school psychologist.

The District cross-examined Student's witnesses.

## INTRODUCTION AND STATEMENT OF THE CASE

Student is a twelfth grade student at one of the District's high schools, who was first found eligible for special education and related services on January 26, 2005, as a student with a specific learning disability (SLD).

On November 28, 2005, Student, through her attorney, filed a Complaint requesting a due process hearing, naming the District as respondent. On December 21, 2005, OAH served a Notice of Due Process Hearing and Mediation. On January 5, 2006, the District, filed a Notice of Insufficiency of Complaint (NOI). On January 9, 2006, Student objected to the District's NOI as untimely. On January 12, 2006, Administrative Law Judge Elsa H. Jones, denied the District's challenge to the complaint. Also on January 12, 2006, Student's request for a continuance was granted. On March 6, 2006, Administrative Law Judge Vincent Nafarrete conducted a prehearing conference and clarified the issues for hearing.

The matter convened for hearing on March 21-24, 2006, in Compton, California. Sworn testimony and documentary evidence was received. The record was held open for the submission of written closing arguments. Upon receipt of the parties' closing briefs on April 7, 2006, identified as Exhibit S for Student and Exhibit 18 for the District, the matter was submitted for decision.

## ISSUES

1. Did the District meet its child-find obligation in regard to Student from November 28, 2002, until January 26, 2005, to identify Student's disabilities and provide an educational program to address her needs?<sup>1</sup>
2. Was the District's December 8, 2004 assessment of Student appropriate?
3. Did the District deny Student a free appropriate public education (FAPE) by failing to timely convene an Individualized Education Program (IEP) meeting and failing to provide appropriate academic support and address her social and emotional needs, as described in its January 26, 2005 IEP?
4. If the District failed to identify Student's disabilities and offer or provide her with a FAPE, is she entitled to compensatory education and services?

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<sup>1</sup> The parties agree that the three-year statute of limitations applies. (Cal. Educ. Code § 56505(1).)

## CONTENTIONS OF THE PARTIES

In this proceeding, Student alleges that the District did not meet its child-find obligations from November 28, 2002, until January 26, 2005, by failing to earlier identify her as eligible for special education as a student with an SLD or an emotional disturbance (ED). Student further alleges that the District's December 8, 2004 assessment of Student failed to examine all areas of suspected disability, namely her social and emotional needs and written language deficits. Student also maintains that the January 26, 2005 IEP that the District provided for two hours in the resource specialist program was insufficient to meet her academic and social and emotional needs, and thus not an offer of FAPE. Student further contends that although the IEP team agreed to make a referral for mental health services, the District failed to do so. If the issues are resolved in Student's favor, Student seeks an independent psycho-educational evaluation at District expense, compensatory education consisting of five hundred hours of one-to-one tutoring by a nonpublic agency, and placement in a nonpublic school.

The District contends that the alleged failure to meet child-find obligations is not a legally cognizable cause of action for a special education hearing. In the alternative, if the merits are reached, the District maintains that it attempted general education intervention before resorting to special education resources by referring the family for counseling services. It further asserted that its December 2004 assessment was appropriate, it conducted a follow-up assessment in October 2005 to assess Student's social and emotional needs, Student's mother signed consent for Student's initial IEP, and Student's program has since been modified to adequately address her educational needs. According to the District, Student is not entitled to any remedies.

The ALJ makes findings of fact, legal conclusions, and orders as follows:

### FACTUAL FINDINGS

#### *The Parties and Jurisdiction*

1. Student is a seventeen-year old student who lives with her older brother, mother, and grandmother within the boundaries of the District. Student has attended District schools since the fourth grade (1997-1998). Student began her senior year at Dominguez High School in the fall of 2005 but has not satisfied credit requirements or passed the California High School Exit Examination, and is not expected to graduate. Student will turn eighteen in September 2006.

2. Student was first identified as a student with an SLD, qualifying her for special education on January 26, 2005, and was placed in the District's resource specialist program. Student continued to receive special education and related services at all times during the pendency of this proceeding.

*Student's Educational History/District's Child-Find Obligations*

3. Student was in the regular education program during her elementary, middle school, and ninth (2002-2003) and tenth grade (2003-2004) high school years.

4. In middle school, Student received Cs, Ds, and Fs in academic subjects in both the seventh (2000-2001) and eighth (2001-2002) grade school years.

5. At the end of middle school, in her eighth grade school year in May 2002, Student achieved grade equivalency scores of 4.0 in total reading, and 4.3 in total mathematics on standardized tests (Stanford Achievement Test-9).

*Ninth-Grade School Year (2002-2003)*

6. At the start of high school, in the ninth grade (2002-2003), Student continued to receive low and failing grades in academic subjects, including an F in English I and an F in general biology. She earned a B grade in preparatory mathematics.

7. Student's mother was concerned about her daughter's poor grades but attributed her performance to lack of motivation

8. Roberta Escorpion, Student's ninth-grade English teacher, characterized Student as not particularly bright, but a quiet student who did not call for extra attention. Ms. Escorpion had never referred one of her students for special education and did not refer Student.

9. On standardized testing administered in the Spring of 2003, Student achieved below the first percentile in total reading and general mathematics. No grade-equivalency scores were provided.

10. At the end of the ninth-grade school year (2002-2003), Student received the following grades: D in English I, C in chorus, D in comparative literature, D in biology, C in physical education, and D in preparatory mathematics.

11. Mjenzi Ujamaa, the District's high school counselor, had a case load of approximately eight to nine hundred ninth and tenth-grade students when Student was in the ninth grade.

(A) Mr. Ujamaa conceded he did not pay a lot of attention to Student during her ninth grade year, but was aware of reports she was late to class. Mr. Ujamaa considered Student's low grades to be a product of poor attendance and the fact that the ninth grade was a "transitional year" for many high school students.

(B) Mr. Ujamaa believed that a ninth grader's performance at a fourth-grade level in high school was not atypical and that tutorial services and regular education class placements were meant to address student deficits.

12. Student presented no evidence from any ninth-grade teacher or other witness describing either academic or social and emotional difficulties sufficient to alert the District that Student had special education needs. Student passed all her classes, albeit with poor grades. Student was promoted to the tenth grade and continued in the regular education program.

*Tenth-Grade School Year (2003-2004)*

13. In the fall of the tenth grade (2003-2004), Student received even lower grades than in the ninth grade earning Fs in every academic subject including English, language, algebra, general chemistry, and world civilization. She received a D in physical education.

14. Tenth-grade mathematics teacher Susanna Vargas reported to the school counselor on two or three occasions that Student was quiet, did not work in groups, did not complete warm-up assignments, and did not “get it.” Instead of completing assigned work, Student colored with crayons at her desk. Student did not ask for help and was emotionally withdrawn. During lunchtime, Student stayed in the classroom.

15. Although Ms. Vargas previously taught in the Philippines for fifteen years, at the time Student was in her class she was relatively new to the California school system and was provided with little or no training regarding legal requirements. Based upon her more current awareness of special education laws, Ms. Vargas would have referred Student for a special education assessment when Student was in her class.

16. Kimberly Anderson-Jefferson, an experienced general education teacher, was Student’s tenth grade English teacher. Student failed her class and received an F grade for both the fall and spring semesters.

(A) Academically, Student failed to participate and was not performing at or near high school or even middle school standards. Student’s work was gibberish and incomprehensible in all areas of study including reading, writing, listening, and speaking. Student got lost in her large class of thirty-nine students and was “like a stick of furniture.”

(B) In the social and emotional domain, Student urinated on herself in class, stood outside the classroom, and would not enter the room even with coaxing. Student played with dolls in class.

(C) Ms. Anderson-Jefferson reported her concerns to Mr. Ujamaa. Ms. Anderson-Jefferson believed that Student should have been placed in a small class with one-on-one support and that Student’s problems would have been more appropriately addressed by a trained psychologist.

17. Gerard Sayles, an experienced general education teacher for eleven years, was Student’s tenth-grade social studies teacher. Student received F grades for both the fall and spring semesters. Student did not perform well academically, did not participate in class, and

doodled and copied things out of magazines instead of completing in-class written assignments. She was a slow learner, performed below grade level, and did not read aloud in class.

18. As Student's tenth-grade school year (2003-2004) began, and no later than the first progress reporting period in the fall of that school year, Mr. Ujamaa was aware of Student's teachers' concerns, reports of Student's atypical behaviors both in and out of class, and her declining academic performance. Mr. Ujamaa considered Student's fall tenth-grade failing grades to be a "major red flag" and an indication that Student lacked sufficient foundation from the ninth-grade to meet tenth-grade curriculum requirements. Mr. Ujamaa knew or had reason to suspect that Student was a student who required a referral for assessment.

19. Sometime during the tenth-grade school year, Mr. Ujamaa contacted Student's mother, but upon Mother's expression of reluctance to have Student "looked at," he decided not to "push." Neither Mr. Ujamaa nor other District personnel convened an student study team (SST) meeting, or otherwise explained the range of interventions or services available to Student.<sup>2</sup>

20. In March 2004, during the tenth-grade spring term after Mr. Ujamaa became aware that Student had urinated on herself in the classroom, Mr. Ujamaa referred the family to Shields for Families. Shields for Families subcontracted with the District to provide school-based mental health services to identified families.

21. On April 27, 2004, after initial interviews with Student, Mother, and District personnel, Shields reported that Student presented with a depressed mood, nightly enuresis, low self-esteem, poor personal hygiene, poor peer relationships, and was withdrawn. Student was extremely anxious upon entering and leaving the classroom and dealing with her peers in a group setting. Interviews with Student's teachers revealed that Student's poor attendance record was the result of her late entries into her classes. Shields recommended that Student receive tutoring and have an IEP to assess for learning disabilities.

22. Beginning in April 2004, and extending through the regular school session and the summer break, Shields provided counseling services to Student once each week.

23. On several occasions, Mr. Ujamaa accompanied Student and helped her enter the classroom. He observed that Student was fidgety, anxious, and had quickened speech.

24. Despite the provision of counseling services and Mr. Ujamaa's assistance, Student continued to receive failing grades. At the end of her tenth grade year (2003-2004), Student received the following grades: D in English, F in language, F in algebra, F in

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<sup>2</sup> In the District, convening an SST meeting is a general education program function. Teachers and other District personnel meet with a parent and student to discuss academic or behavioral difficulties and develop strategies to address them. Typically, the SST meets again six to eight weeks later to consider the student's progress.

general chemistry, F in world civilization, and C in physical education. Student did not pass the California High School Exit Examination administered in the spring of 2004, and continued to perform below the first percentile in reading and mathematics on standardized achievement tests. The District did not refer Student for assessment or other intervention and promoted her to the eleventh grade in the regular education program.

*Parental Request for Assessment/Eleventh-Grade School Year (2004-2005)*

24. At the start of Student's eleventh-grade school year (2004-2005), on September 27, 2004, Mother wrote a letter to the District stating in relevant part:

I am the parent of [Student], who is currently enrolled in the 11<sup>th</sup> grade at Dominguez. [Student] is low on credits and has been struggling with her academics in the past few years. I am requesting that an IEP meeting be held for my daughter as soon as possible. She has been having some problems at school I think that her program may need to be modified to address her individual needs.

I am also requesting that a behavioral assessment be completed before the meeting and that I receive a copy of this assessment. I look forward to meeting with her counselor, teachers, and school psychologist.

Mother did not consent to waive IEP timelines.

25. Mary Tapia, Shields case manager assigned to Student since October 2004, was responsible for coordinating services with the District. On November 4, 2004, and then again on November 9, 2004, Ms. Tapia submitted a written request for an SST meeting to the District. Ms. Tapia attached Mother's previous written request for an IEP and behavioral assessment but asked for an SST meeting because she had been told by District personnel that an SST meeting must be attempted before an IEP meeting could be convened.

26. Lupe Alvarado, the District's program coordinator for special needs children, received a copy of the November 2004 letter from Shields. Ms. Alvarado was aware that the SST procedure was in process but also aware that there had been a request for a psycho-educational assessment.

27. It is District policy to attempt the SST process before resorting to IEP procedures. Even if a parent requests an assessment and/or an IEP meeting, the District typically explains the SST process to the parent, and in most cases holds an SST meeting before the IEP process is initiated.

28. The SST meeting, scheduled for November 30, 2004, did not take place because Vice-Principal Wilson was unable to attend. The SST could not formally convene unless a school administrator was present.

29. At Ms. Tapia's urging, an informal meeting took place on November 30, 2004, with Mother, Student's grandmother, Student, Ms. Beebe, and Brad Keller, school psychologist for the District in attendance. After the meeting, Mr. Keller provided a proposed assessment plan to Ms. Tapia and asked her to obtain parental consent. The parties stipulated that Mother provided consent to the District's proposed assessment plan sometime after November 30, 2004, and before the date of the assessment conducted on December 8, 2004.<sup>3</sup>

#### *The District's Initial Psycho-Educational Assessment*

30. Mr. Keller assessed Student on December 8, 2004. The basis for the referral was listed as: "[Student's] current teachers as well as her Shields for Families counselor expressed concern that she might have a learning disability and should be assessed to see if she qualified for special education services. There has also been concern expressed about the anxiety that she appears to have about being in school."

31. Mr. Keller assessed Student's cognitive functioning, academic achievement, visual-motor skills, and attempted to assess her social emotional status.

(A) In the academic domain, Mr. Keller administered several instruments and reported Student's scores as follows:

(1) The Naglieri Nonverbal Ability Test was a culture-free instrument that measured nonverbal thinking and reasoning skills. Student scored a standard score of 82 which fell in the twelfth percentile, and Mr. Keller concluded Student was in the low-average range of cognitive functioning.<sup>4</sup>

(2) The Woodcock-Johnson Tests of Academic Achievement-III was administered to measure academic achievement. In the area of reading, Student achieved grade equivalency scores of 7.5 in word identification skills, 5.1 in passage comprehension, and a 5.4 score in broad reading. In the area of mathematics, Student achieved grade equivalency scores of 4.5 in calculation, 3.1 in applied problems, and a 3.8 score in broad mathematics. On the dictation language subtest, Student achieved a grade equivalency score of 6.6. Mr. Keller concluded that reading decoding and saying individual words were Student's areas of relative strength and mathematics was her greatest area of weakness.

(3) On the Beery Test of Visual Motor Integration, Student was asked to look at and copy geometric designs of increasing difficulty and was found to have visual motor skills deficits.

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<sup>3</sup> The District was unable to produce either the proposed or consented-to assessment plan.

<sup>4</sup> Student is an African-American student. Thus, the District is prohibited from administering intelligence tests. (*Larry P. v. Riles*, 459 F. Supp. 926 (N.D. Cal. 1979), *aff'd in part, rev'd in part*, 793 F. Supp. 969 (9<sup>th</sup> Cir. 1986).)

(4) The Learning Efficiency Test II was administered to test immediate, short and long-term memory for ordered and unordered sequences in both visual and auditory modalities. Student's low scores in both areas indicated she had visual processing difficulties and auditory memory deficits.

(B) In the social and emotional domain, Mr. Keller administered the Piers-Harris II survey to Student, but determined the test results were invalid. Mr. Keller reported teacher observations that Student exhibited extreme anxiety, but he conducted no additional testing.

32. It is reasonable to infer that Mr. Keller recognized more information was needed in the social and emotional domain because he recommended to the IEP team that Student be further assessed by the Department of Mental Health (AB3632).<sup>5</sup>

33. Student presented no evidence in support of her contention that the District should have assessed Student in the area of written language.

*The January 26, 2005 IEP*

34. The IEP team met on January 26, 2005, to consider the District's assessment and teacher reports to determine whether Student was eligible for special education.

35. Student's eleventh-grade English teacher was Julianne Beebe, head of the English department, and characterized as a "seasoned teacher" by Mr. Ujamaa. Ms. Beebe reported that academically, Student had difficulty understanding the class curriculum. Student was a slow learner and she answered simple quizzes randomly. In the social and emotional domain, Student did not interact with peers, read magazines suitable for younger children, wrote out lists of celebrities, and seldom if ever did assigned work. Other students laughed about Student when she was not present.

Student's eleventh-grade social studies teacher was Diane Bilbrew, a credentialed teacher for twenty-five years. In her class, Student was extremely quiet, isolated from other students, did not participate in oral discussion, and did not read in class.

Mr. Ujamaa told the IEP team that Student seemed to work better in a one-to-one situation. Ms. Beebe told the IEP team that Student was misplaced and had academic and behavioral needs she was unable to service in her mainstream classroom.

36. Academically, Student was unable to focus, complete class assignments, and was behind her same-age peers in reading, writing, speaking, and listening. Behaviorally, Student did not ask for help, was lost in a large regular education class, and was isolated from her peers.

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<sup>5</sup> "AB3632" is a common term applied to California Government Code sections 7570-7588, which determine when community mental health agencies operating under the Department of Mental Health must assess pupils with suspected disabilities, and provide those determined eligible with special education and related services.

37. The IEP team concluded that Student was eligible for special education as a student with a specific learning disability due to the severe discrepancy between her intellectual ability and her achievement in the areas of mathematics and language arts. The discrepancy was due to a disorder in one or more of the basic psychological processes and was not the result of environmental, cultural, or economic advantages. This discrepancy could not be corrected through regular services within the general education curriculum.

38. The IEP provided for placement in the resource specialist program (RSP) for forty-five minutes on Monday and two hours from Tuesday through Friday, in the areas of mathematics and language arts.

39. Mr. Ujamaa recommended the RSP to the IEP team because Student was significantly behind in English and based upon his belief an initial RSP placement complied with least restrictive environment requirements. Mr. Ujamaa would have recommended a placement that provided more academic support had he known he could have made that recommendation. Ms. Alvarado believed that District policy was to start with an RSP placement and that District members of the IEP team did not want to push Student too far.

40. The IEP included goals and objectives in the areas of mathematics, reading comprehension, vocational skills, and social and emotional skills. An Individualized Transition Plan was also provided.

41. Modifications to the general education curriculum were listed, including additional time to complete tests, assignments broken into smaller parts or shortened, and use of computational aids.

42. The IEP team recommended a referral for AB3632 mental health assessment and services.

43. The District had no standard procedure to complete the referral for mental health testing. Through the close of the record in this matter, no referral to mental health has been made.

#### *Educational Progress from January 2005 to the present*

44. Ricardo Olivares was Student's assigned resource specialist teacher for the spring 2004-2005 school term. There were thirteen to fifteen students in his resource English class and less than ten students in the resource algebra section. Each class had one aide.

(A) Academically, Student doodled, came to class with stacks of magazines, but ultimately became attentive to the lessons. Student made appropriate academic progress in the RSP English class, but needed more academic support in mathematics than the RSP could provide.

(B) Student was very quiet and did not talk much at first, but then she became a “social butterfly.”

45. In the spring term of her eleventh-grade year, Student continued to receive failing grades in the general education program earning F in world civilization, F in art, and F in world history. In the RSP classes, Student earned D in English II, C in English III, and C in algebra I.

46. At the start of her twelfth-grade school year (2005-2006) at the end of August, Student was placed in all regular education classes. Student’s name had been mistakenly taken off the RSP list. Student was not placed back in the RSP program until the beginning of October.

47. The IEP team reconvened on October 14, 2005, and then again on October 25, 2005. Each of Student’s general education teachers reported through Mr. Brown, that Student had difficulty completing all her assignments while the RSP teacher reported that in his class Student managed to finish her work. Mr. Brown indicated that he had just started to inform Student’s regular education teachers how to implement modifications and accommodations to their programs. Student was significantly behind in credits needed to graduate. It was agreed that Student would be reassessed to determine if she was eligible for special education and related services under the category of emotional disturbance (ED).

48. School psychologist Keller reassessed Student on October 31, 2005, to determine if she was eligible for special education under the category of ED.

(A) Mr. Keller administered the Woodcock-Johnson-III again. Student achieved a grade equivalency score of 3.5 in broad math, 5.6 in broad reading, and 6.6 in language.

(B) In the social and emotional domain, Mr. Keller administered several tests with the following results:

(1) RSP teacher Olivares completed the Burks’ Behavior Scale. Mr. Olivares rated the following areas as significant: poor attention, poor academics, excessive anxiety, and poor ego strength. Mr. Olivares rated excessive withdrawal as very significant. On another scale rating, Mr. Olivares rated the following areas as significant: inability to learn, unhappiness or depression, physical symptoms or fears.

(2) The Behavior Assessment Scale for Children (BASC) was administered to Student. On this self-report, her school maladjustment composite rating was scored in the at-risk range; personal adjustment was scored in the high range, while other scores indicated a normal sense of well-being. Mr. Keller reported that these scores suggested Student’s pervasive discomfort with school.

(C) Mr. Keller found that Student exhibited characteristics that impeded her learning over a long period of time. Mr. Keller found that her lack of willingness to participate or

communicate appeared to be beyond what should be expected and thus she exhibited inappropriate types of behavior and feelings under normal circumstances. However, Mr. Keller found it difficult to determine whether Student's lack of participation and failure to complete home and class work was due to emotional issues or a lack of interest in school.

49. In his report, Mr. Keller concluded that Student did not meet special education eligibility requirements under the emotional disturbance category. Mr. Keller candidly acknowledged that he was reluctant to label a student with ED at Student's age because of the potential negative effect on her future employment opportunities.

50. Mr. Keller recommended that a behavior support plan (BSP) be developed and implemented. Mr. Keller testified that he thought a BSP should have been in place earlier.

51. The IEP team met on December 5, 2005, to discuss Mr. Keller's recent assessment. The team determined that Student was not eligible for special education under the category of ED. A BSP was developed to address Student's anxiety between classes and lack of participation in class. The BSP provided for the RSP teacher to encourage journaling and an aide to accompany Student to class.

52. Student's placement was modified to provide for special day classes (SDC) as well as support through the RSP program. Student was continued in the RSP program for both math and English, and was placed in an SDC for science and United States history.

53. The IEP team determined that Student had not met any of the goals and objectives from the previous January 26, 2005 IEP. The same goals were continued for the remainder of the school year. The criteria to achieve each goal was reduced.

54. Beginning in October 2005, Student's counseling sessions with Shields for Families increased to twice each week.

On January 30, 2006, Shields for Families' psychologist, Dr. Janet Vivero, conducted an evaluation to assess Student's level of cognitive and adaptive functioning.

(A) Dr. Vivero administered a standardized intelligence test, the results of which are barred from consideration for educational planning purposes by law and District policy.

(B) Dr. Vivero conducted a social/emotional assessment including self-report and projective measures. The Roberts Apperception Test for Children revealed many themes suggesting anxiety. Other projective measures corroborated this finding (House-Tree-Person) suggesting Student's fear led to isolation and withdrawal, and a tendency to avoid interpersonal relationships. In a clinical interview, Student explained she avoided entering classrooms because she feared peers' taunting and teasing. Student reported an incident where she had been lured into a car by a stranger and sexually assaulted.

55. On January 31, 2006, the IEP team met again for Student's annual review. The team found that Student continued to be eligible for special education as a student with a SLD. The team reported that Student continued to exhibit a high level of anxiety about being in the classroom and appeared to be uncomfortable around unfamiliar peers and adults. Student was functioning in the low average cognitive range and below average in mathematics. All the same goals and objectives from the previous year were continued because the goals had not been met in the areas of vocational skills, reading comprehension, mathematics, and social/emotional skills. The IEP team recommended that Student attend the extended school year program.

56. Student was offered placement in a life-skills class, but Mr. Ujamaa placed her in academic classes instead in the hopes she might earn credits towards graduation.

57. As of January 31, 2006, Student was forty credits shy of completing credits necessary to graduate in June 2006 with her classmates.

## LEGAL CONCLUSIONS

### *Applicable Legal Principles*

1. Student, as the moving party, has the burden of proving the essential elements of her claims. (*Schaffer v. Weast*, \_U.S.\_, 126 S. Ct. 528 (2005).)

2. Student may be entitled to continue to receive special education and related services until she reaches age twenty-two. (Cal. Educ. Code § 56026.)

3. Under both State special education law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400 (2005); Cal. Educ. Code § 56000.) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet State educational standards and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9).) The right to a FAPE arises only after a student is assessed and determined to be eligible for special education.

4. The IDEA and State special education law impose upon each school district the duty to actively and systematically identify, locate, and assess all children with disabilities who require special education and related services. (20 U.S.C. § 1412; 34 C.F.R. § 300.125; Cal. Educ. Code §§ 56300, 56301.) The obligation set forth in this statutory scheme is often referred to as the "child-find" or "seek and serve" obligation. This obligation to identify, locate, and assess applies to "children who are suspected of being a child with a disability... and in need of special education, even though they are advancing from grade to grade." (34 C.F.R. § 300.125, subd. (a)(2).) The comments to 34 C.F.R. section 300.300, subdivision (a)(2), note the "crucial role that an effective child-find system plays as part of a State's obligation of ensuring that FAPE is available to all children with disabilities." (68 Federal Register no. 48 (March 12, 1999) at p. 12573.)

5. Under State special education law, the school district must establish written policies and procedures for a continuous child-find system. (Cal. Educ. Code § 56301.) The policies and procedures must include written notification to all parents of their rights and the procedure for initiating a referral for assessment. (*Id.*) Identification procedures shall include “systematic methods of utilizing referrals of students from teachers, parents, agencies, appropriate professional persons, and members of the public,” and shall be coordinated with school site procedures for referral of pupils with needs that cannot be met with modification of the regular education program. (Cal. Educ. Code § 56302.) Under State law, a child may be referred for special education only after the resources of the regular education program have been considered and, where appropriate, utilized. (Cal. Educ. Code § 56303.)

6. Assessments performed as part of a school district’s child-find obligations are the first step towards finding a child eligible for special education and related services formulating an offer of a FAPE. This step provides for the direct access to FAPE that the IDEA guarantees. (34 C.F.R. § 300.351.)

7. A local educational agency’s (LEA) child-find duty is not dependent on a request by the parent for special education testing or referral for services. “A child’s entitlement to special education should not depend upon the vigilance of parents (who may not be sufficiently sophisticated to comprehend the problem)...” (*Hicks v. Purchase Line Sch. Dist.*, 351 F. Supp. 2d 1250, 1253 (W.D. Pa. 2003.)) Rather, the duty arises if the LEA had knowledge of facts tending to establish a suspected disability and a need for assessment to determine eligibility for IDEA special education services. An LEA must respond within a reasonable time after obtaining notice of the potential disability and need for special education services. If the child’s behavior or performance indicates the need for special education, then the LEA is deemed to have knowledge of that fact. (20 U.S.C. § 1415(k)(8)(3)(ii.))

8. California Code of Regulations, subsection 3030, subdivision (j), sets forth the eligibility criteria for students with a specific learning disability. This category requires a showing of a disorder affecting one or more of the basic psychological processes, together with a discrepancy between a student’s aptitude and performance, as measured by standardized test results.

9. To be found eligible for special education and related services as a child with an emotional disturbance the pupil, because of an emotional disturbance, must exhibit one or more of the following characteristics over a long period of time to a marked degree, which adversely affect educational performance: (1) an inability to learn which cannot be explained by intellectual, sensory, or health factors; (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) inappropriate types of behavior or feelings under normal circumstances exhibited in several situations; (4) a general pervasive mood of unhappiness or depression; and (5) a tendency to develop physical symptoms or fears associated with personal or school problems. (Cal. Code Regs., tit. 5, § 3030(i); 34

C.F.R. § 300.7(c)(4).)<sup>6</sup> In addition, it must be shown that the student requires instruction, services or both which cannot be provided with modification of the regular school program.

10. A referral for assessment means any written request for assessment made by a parent, teacher, or other service provider. (Cal. Educ. Code § 56029.) All referrals for special education and related services shall initiate the assessment process and must be documented. (Cal. Code Regs., tit. 5, § 3021, subd. (a).)

11. Once a student is referred for an assessment and the parent provides written consent to the assessment plan, the District must assess the student “in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status.” (Cal. Educ. Code § 56320, subd. (f).) Special education law permits a school district the alternative to seek a due process hearing if a parent refuses consent for assessment. (Cal. Educ. Code § 56501, subd. (a)(3).) The purpose of an initial evaluation is to determine a student’s eligibility for special education and to determine the educational needs of the child. (20 U.S.C. § 1414, subds. (a)(1)(B)(i) and (ii).)

12. A school district shall develop a proposed assessment plan within 15 calendar days of referral for assessment, unless the parent agrees in writing to an extension and shall attach a copy of the notice of parent’s rights to the assessment plan. (Cal. Educ. Code §§ 56043, subd. (a)); 56321, subd. (a).) A parent shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision whether to consent to the assessment plan. (Cal. Educ. Code § 56403, subd. (b).) After obtaining parental consent, assessment may begin immediately. A school district must develop an IEP no later than 50 calendar days from the date of the receipt of the parent’s written consent to assessment, unless the parent agrees in writing to an extension. (Cal. Educ. Code § 56043, subd. (d).)<sup>7</sup> Referral to a student study team cannot delay the assessment and IEP timelines absent parental consent. (Cal. Educ. Code § 56321, subd. (a).)

13. A school district may initiate a referral to a local mental health agency for assessment of a pupils’ social or emotional status and qualification for services. (Cal. Gov’t. Code § 7576, subd. (b); Cal. Code Regs., tit. 2, § 60060(c).)

14. Under California special education law, the IDEA, and effective July 1, 2005, the Individuals with Disabilities Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that provides special education and related services designed to meet their unique needs and provide them with educational benefit, and to prepare them for employment and independent living. (Cal. Educ. Code §§ 56000, *et seq*; 20 U.S.C. §

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<sup>6</sup>State special education law uses the term “serious emotional disturbance.” (Cal. Code Regs., tit. 5, § 3030(i).) Federal law uses the term “emotional disturbance.” (34 C.F.R. § 300.7(a).) The ALJ uses the federal term.

<sup>7</sup> The ALJ applies the law then in effect. (Compare, Cal. Educ. Code § 56043, subd. (c)., effective 10/7/05.)

1401(25) (1997); 20 U.S.C. § 1402(29) (2004.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education, and conform to the child's IEP. (20 U.S.C. § 1401(8) (1997); 20 U.S.C. § 1402(9) (2004).)

15. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200 (1982), 102 S.Ct. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. The Court held that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.*, at 198-200.) *De minimus* benefit or only trivial advancement, however, is insufficient to satisfy the Rowley standard of "some benefit." (*Walczak v. Florida Union School District*, 142 F.3d 119, 130 (2d Cir. 1998.) A child's academic progress must be viewed in light of the limitations imposed by his or her disability and must be gauged in relation to the child's potential. (*Mrs. B. v. Milford Board of Education*, 103 F.3d 1114, 1121 (2d Cir. 1997).)

16. Special education law also requires that a student be educated in the least restrictive environment (LRE) and that removal of a student from the regular education environment occur only when the nature and severity of the student's disability is such that education in regular education classes cannot be achieved satisfactorily. (20 U.S.C. § 1412(1)(5)(A); 34 C.F.R. § 300.550(b); Cal. Educ. Code § 56301.)

17. An IEP is an educational package that must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee*, 998 F.2d 1083, 1089 (1<sup>st</sup> Cir. 1993).) The term "unique educational needs" is to be broadly construed and includes the student's academic, social, emotional, communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9<sup>th</sup> Cir. 1996) (citing J.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).)

18. The District can be held responsible for information it had a basis for knowing at the time it developed the IEP. "In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable... at the time the IEP was drafted." (*Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999), quoting *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1041 (3d Cir. 1993).) A school district is obligated to revise a student's educational program if it becomes apparent over the course of the school year that the student is not receiving educational benefit.

19. A parent may obtain an independent educational evaluation (IEE) performed by a qualified specialist at public expense if the parent disagrees with an assessment obtained by the educational agency, and the educational agency is unable to show at a due process hearing that its assessment was appropriate. (34 C.F.R. § 300.502(b); Cal. Education Code § 56329(b).)

20. When a school district denies a child a FAPE, the child is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (*School Committee of the Town of Burlington v. Dept. of Education*, 471 U.S. 359, 369 (1985); *Student W. v. Puyallup School District*, 31 F.3d 1489 (9<sup>th</sup> Cir. 1994); 14 U.S.C. §1415(i).) In addition, equitable considerations may be weighed in granting relief and courts have broad discretion to fashion a remedy which helps a student overcome lost educational opportunity. (*Burlington*.) There is no obligation to provide day-for-day or hour-for-hour compensation. “Appropriate relief is relief designed to ensure that the Student is appropriately educated within the meaning of the IDEA.” (*Puyallup*, 31 F.3d at 1497.)

21. An order for a prospective placement must be based upon a finding that the institution is certified by the State of California. (Cal. Educ. Code § 56505.2, subd. (b).) A potential placement does not have to be the exact proper placement or services required under the IDEA, but it is required that the prospective placement be designed to address a student’s unique needs and provide some educational benefit. (*Alamo Heights Independent Sch. Dist. v. State Bd. of Education*, 790 F.2d 1153, 1161 (5<sup>th</sup> Cir. 1986); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 13-24 (1993).)

22. An expert’s credibility may be evaluated by examining the reasons and factual data upon which the expert’s opinions are based. (*Griffith v. County of Los Angeles*, 267 Cal.App.2d 837, 847 (1968).)

### *Determination of Issues*

Issue 1: The child-find issue is a cognizable claim. The District failed its child-find obligations from the fall of 2003, through January 26, 2005, when it first determined Student was eligible for special education and related services. The District knew or had reason to suspect that Student was eligible for special education either as a student with a specific learning disability or under the category of emotional disturbance.

23. As a preliminary matter, the District argues that a school district’s compliance with its child-find obligations is not within the subject-matter jurisdiction of special education due process hearings. Child-find obligations, set out in legal principles 4 and 5 above, are a precursor to a school district’s responsibility to offer and provide a disabled student with a FAPE. Thus, contrary to the District’s assertion, a school district’s duty to identify a child who is in need of assessment to determine eligibility for special education services is a cognizable claim for this due process hearing and is fairly subsumed within California Education Code section 56501, subdivisions (a)(1) and (2). (See *Grant Miller v. San Mateo-Foster City Unified School District*, 318 F. Supp. 2d 851 (N.D. Cal. 2004).)

24. Based upon Findings 6-10 and 12 above, from November 28, 2002, through the end of Student’s ninth-grade school year in June 2003, the District did not know or have reason to suspect that Student required an assessment to determine special education eligibility. Thus, the District did not deny Student a FAPE for this time period.

25. As set forth in Findings 13, 14, and 16-18 above, school counselor Ujamaa's assumptions proved incorrect as Student started her tenth-grade school year (2003-2004). By the first reporting period in the fall of 2003, Mr. Ujamaa knew or should have suspected that Student required an assessment to determine special education eligibility. Teachers reported to Mr. Ujamaa detailing Student's continued and worsening academic performance and unusual and disturbing behavioral manifestations.

26. Based upon legal principle 7 and Finding 19, Mother's response to Mr. Ujamaa was neither a bar to intervention nor an adequate justification for the District's failure to act. While parental consent may be necessary to conduct an assessment, Mr. Ujamaa failed to provide Mother with a proposed assessment plan, or seek a due process hearing in the absence of such consent. (Legal principle 11.)

27. The referral to Shields for counseling services in March 2004, while a needed service, did not satisfy the District's child-find obligations. Despite the provision of counseling, Student continued to fail all her academic subjects, exhibit anxiety, and fall further behind in achieving credits needed to graduate for the remainder of the tenth grade. (Findings 16, 17, 21, 22, 23.)

28. Based upon legal principle 8 and Factual Findings 14, 16(A) and (C) and 17 above, the District had reason to know that Student had difficulty attending to tasks, understanding assignments, and was performing below her cognitive ability. Had the District referred Student for assessment in the fall of the tenth-grade school year, it would have found Student eligible for special education as a student with an SLD.

29. Based upon legal principle 9, the District had ample reason to suspect that there was an emotional component to Student's poor academic performance. As set forth above in Findings 14, 16(B) and (C), and 20-22, Student exhibited anxiety, isolation, and withdrawal, atypical behaviors such as playing with dolls and crayons, as well as enuresis at home manifesting emotional disturbance criteria across environments and thus to a marked degree. As set out above in Findings 16(B), 21, and 22, Student was afraid to enter the classroom. It requires little explanation to conclude that Student's anxiety which rendered her unable to enter a classroom adversely affected her educational performance. At a minimum, the District knew or had reason to know that Student qualified for special education under the emotional disturbance category from the fall of her tenth-grade school year.

30. Based upon Legal Determinations 25-29 above, the District knew or had reason to know that Student was eligible for special education and related services and was therefore entitled to a FAPE. From the fall of 2003 to January 26, 2005, when the District found Student eligible for special education and offered her a special education placement, the District denied Student a FAPE.

Issue 2: The District's initial assessment of Student was inappropriate because it failed to assess Student in a suspected area of need, namely the social and emotional domain.

31. Based upon legal principle 11 and Findings 30, 31(B), and 32, Student established that the District failed to assess Student in all areas of suspected disability, namely the social and emotional domain, and thus was inappropriate.

Issue 3: The placement described in the January 26, 2005 IEP denied Student a FAPE.

32. Student asserts that the District committed a procedural violation which denied her a FAPE by failing to comport with statutory timelines summarized above in legal principle 12. Thus, to determine whether the District offered or provided Student with a FAPE, the analysis is two-fold, requiring an examination whether procedural steps were followed and whether the educational program is substantively appropriate.

33. Based upon legal principle 12 and Finding 24, the IEP was held beyond the statutory timelines after Mother's request for assessment and IEP meeting. Although the law requires a school district to consider utilizing the resources of the general education program before referring a student for special education, it must do so only if it is "appropriate." (Cal. Educ. Code § 56043.) Under the facts and circumstances of this case, particularly those set out above in Findings 13-14, 16-18, the District knew or had reason to know that the resources of the general education program were inadequate. Initiating the SST process instead of timely responding to Mother's request was unjustified. Special education intervention came over one year after the District knew or suspected Student needed services. This additional delay resulted in further loss of educational opportunity, was prejudicial to Student's interests, and denied her a FAPE.

34. The ALJ turns next to whether the educational program was substantively appropriate. (*Gregory K. v. Longview School District*, 811 F.2d 1314 (9<sup>th</sup> Cir. 1987).) If the District's program was designed to address Student's unique needs, was reasonably calculated to provide her with some educational benefit, comported with her IEP, then the District provided a FAPE.

35. As set out in Findings 35-36, Student had unique academic and social, emotional, and behavioral needs. Student required academic instruction in a small-group setting in all content areas of the high-school curriculum, and required intensive one-to-one academic support in reading and mathematics. She also required skills to prepare her for employment and independent living.

36. Based upon Legal Determination 31 above, the District did not possess objective baseline data regarding Student's social, emotional, and behavioral needs. Lacking this critical information, the IEP team was unable to develop an educational program to address this undisputed area of need. The failure to conduct an appropriate assessment in the social and emotional domain, in light of legal principles 17 and 18, is sufficient in and of itself to find that the educational program was not designed to meet Student's needs or reasonably calculated to provide her with educational benefit.

37. Based upon Findings 13-18, 35, and 36, Student established that her unique academic needs required more intensive academic support in a small-group and one-to-one setting than the limited placement in the RSP program could provide. Eight hours and forty-five minutes each week of RSP support, with all remaining classes conducted in the regular education program, was not designed to meet Student's academic unique needs, or reasonably calculated to provide her with educational benefit. As set forth in Finding 39, Student further established that the RSP program was selected by District members of the IEP team over placement in a smaller SDC, not in response to Student's unique needs, but rather on a mechanical application of LRE requirements. Children with disabilities may receive their education to the maximum extent *appropriate* with their nondisabled peers. Removal from the general education program is acceptable where, as here, education in regular classes cannot be satisfactorily achieved. (Legal principle 16.) Thus, the RSP program was not reasonably calculated to provide Student with educational benefit.

38. Student failed to receive educational benefit from the program described in the January 2005 IEP. As set forth in Findings 45, 47, and 53, Student, provided with only minimal RSP support, continued to fail all subjects in the regular education program and fell behind in credits needed to graduate. As set forth in Findings 48 and 54, nearly one year later, Student continued to exhibit social and emotional problems. In January 2006, Student had not met a single goal set forth in her initial IEP. (Finding 63.)

39. The program provided to Student failed to comport with the IEP. Based upon Finding 47, as of October 2005, the modifications and accommodations set forth in Student's IEP, intended to be applied by Student's regular education teachers, had yet to be implemented. In addition, based upon Finding 43, the referral for AB3632 assessment and services was never accomplished. Contrary to the District's assertion that the IEP team met frequently to modify Student's program as her needs became more apparent, as set forth in Finding 46, Student was mistakenly placed in the regular education program at the start of the 2005-2006 school year.

40. In sum, Student was denied a FAPE since: (A) the District failed to convene a timely IEP meeting resulting in further lost educational opportunity; (B) the educational program lacked objective data to explain the relative contribution of Student's social and emotional deficits to her learning and thus failed to meet Student's social, emotional, and behavioral needs; (C) the RSP placement did not provide sufficient academic support; (D) the educational program was not reasonably calculated to provide Student with educational benefit; and (E) the educational program provided did not comport with the IEP.

Issue 4: Student is entitled to an independent evaluation, the completion of the referral for a mental health assessment, and one-to-one academic tutoring by a credentialed teacher. Student did not establish that she is entitled to placement in a nonpublic school.

### *Independent Evaluation*

41. As set out in Legal Determination 31, the District's initial assessment was inappropriate. Based upon legal principle 19, Student is entitled to an independent assessment. The District argues that Mr. Keller's second assessment, performed in October 2005, renders any additional assessment unnecessary. However, the second assessment, conducted nearly one year after the IEP team meeting and initial determination of eligibility, came too late to impact Student's educational placement for that time frame. In addition, based upon Finding 49, namely Mr. Keller's candor regarding the opprobrium he associates with the ED label and concomitant reluctance to apply it, and legal principle 22, Mr. Keller's findings and conclusions are suspect. Thus, the October 2005 District assessment is not a bar to relief and lends further support to Student's request for an independent assessor. Test instruments shall be selected to comply with legal requirements and to assess the relative contribution of social and emotional issues to Student's programmatic and service needs.

The independent assessment report shall be made available to the IEP team at least twenty business days before the start of the 2006-2007 school year to assist the IEP team to determine the appropriate educational placement.

Based upon Finding 33, Student's request for a written language assessment is denied.

### *AB3632 Referral*

42. In light of legal principle 13, and Findings 32 and 42-43, the District shall complete its AB3632 referral to assist the IEP team with knowledge of Student's therapeutic needs.

### *Compensatory Education*

43. Based upon Legal Determinations 28 and 40, Student lost educational opportunity from the fall of the 2003-2004 school year through the present. There is some evidence to suggest that the implementation of the placement described in the January 2006 IEP, namely the current combined program of RSP and SDC classes is easing some of Student's anxiety and appears to be providing some educational benefit. Nevertheless, Student will not graduate with her classmates.

44. To determine the appropriate amount of compensatory education for this loss of educational opportunity, Student has provided little guidance and has requested five hundred hours of services. Based upon Findings 55-57 and Legal Determinations 28 and 40, the ALJ concludes that Student's loss of educational opportunity has been substantial. Student has regained some motivation, requires academic tutoring in all curriculum content areas required to graduate, and responds well to one-to-one assistance. Thus, the ALJ finds that Student is entitled to one-to-one intensive academic support in her identified areas of need, including the curriculum content necessary to complete State graduation credit standards to be provided at least until the end of the 2006-2007 regular school year.

45. In light of legal determination 44, Student is awarded three hours of one-to-one academic tutoring by a credentialed teacher every week that school is in session during the remainder of the current regular school year, the 2005-2006 extended school year, and continuing into the 2006-2007 school year, in an amount not to exceed one-hundred fifty hours. The one-to-one academic tutoring shall be provided by a credentialed teacher and may be by District staff. If the District does not have appropriately trained staff, it shall identify, arrange, and provide the academic support as ordered.

46. The IEP team is in the best position to determine, based upon the totality of the circumstances, the academic areas in which Student requires support. Although the ALJ has ordered that the tutoring take place for at least one year, the IEP team will retain the discretion to extend that tutoring beyond one year, as necessary, or into the extended school year, if appropriate. The District shall implement the compensatory educational services in a manner that has minimal impact on Student's school day and ability to participate in her special education program. Nevertheless, the District shall take cognizance of the fact that Student's loss of educational opportunity was substantial.

*Placement in a nonpublic school*

47. Student, who will turn eighteen in September, expressed reluctance and embarrassment if she were to repeat her senior year at her current high school with younger students. However, the ALJ is unable to determine whether an unnamed and undescribed nonpublic school placement will provide Student the academic and behavioral support, the therapeutic environment she may require, and some educational benefit. Student failed to present any facts or legal authority for placement in a nonpublic school. Accordingly, in light of legal principle 21, this request for relief is denied.

ORDER

1. Student is entitled to an independent assessment, conducted by a qualified assessor, at District expense. Test instruments shall be selected to comply with legal requirements and to assess the relative contribution of social and emotional issues to Student's programmatic and service needs. The assessment report shall be made available to the IEP team at least twenty business days before the start of the 2006-2007 school year to assist the IEP team to determine the appropriate educational placement.
2. Within twenty business days from the effective date of this Order, the District shall complete the referral for an AB3632 assessment.
3. Within thirty business days from the effective date of this Order, the District shall convene the IEP team to amend Student's IEP to include: three hours of one-to-one academic tutoring by a credentialed teacher every week that school is in session during the remainder of the regular school year, the 2005-2006 extended school year,

and continuing into the 2006-2007 school year, in an amount not to exceed one-hundred fifty hours. The IEP team will determine the content area of the tutoring. The academic tutoring shall be provided by a credentialed teacher and may be by District staff. If the District does not have appropriately trained staff, it shall identify, arrange, and provide the academic support as ordered. The IEP team will retain the discretion to extend that tutoring beyond one year, as necessary, or into the extended school year, if appropriate.

4. The District shall reconvene the IEP team at least ten business days before the start of the 2006-2007 school year. The IEP team shall consider the results of the IEE and AB3632 referral ordered above in (1) and (2), to make an offer of FAPE, including consideration of credits needed to graduate, skills needed for employment and independent living, as well as Student's academic and social and emotional needs.
5. Student's further requests for relief are denied.

#### PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute: Student prevailed to the extent that the District failed to comply with its child-find obligations from the fall of 2003 until January 26, 2005, the District's assessment was inappropriate for failing to assess in all areas of suspected disability, namely the social and emotional domain, and the January 26, 2005 IEP denied Student a FAPE. The District prevailed to the extent that it complied with its child-find obligations from November 28, 2002, through the end of Student's ninth-grade school year (2002-2003).

#### NOTICE OF APPEAL RIGHTS

The parties are advised that they have the right to appeal this decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Cal. Educ. Code section 56505, subd. (k).)

DATED: April 26, 2006

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JUDITH E. GANZ  
Administrative Law Judge  
Office of Administrative Hearings