

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. N2007120717

DECISION

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 24 through 27, April 1, 2, 24 and 25, 2008, in West Covina, California.

Maureen R. Graves, Attorney at Law, represented Student. John G. Nolte, Attorney at Law, was present during portions of the hearing. Student's mother attended the hearing. At Student's request, the hearing was open to the public.

Courtney M. Cooke, Attorney at Law, represented West Covina Unified School District (District). Cheryl Lawson, Acting Director of Special Education for District, also attended.

Student filed a request for due process hearing (complaint) on December 31, 2007. On January 25, 2008, the hearing was continued. The record remained open at the parties' request until May 21, 2008, when closing briefs were received, and the record was closed.^{1 2}

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¹ On May 8, 2008, OAH granted Student's request for a brief extension to the deadline for briefs.

² Student requests that copies of numerous emails included in Student's exhibit binder be admitted into the record. District opposes the request. Student's request is denied. Both parties had sufficient opportunity during this lengthy hearing to offer both testimonial and documentary evidence.

³ District contends in its reply brief that two exhibits Student included in his closing brief are improper. District's contention is treated as a motion to strike the exhibits. The motion is denied. Student attached copies of a law review article and an order issued by the United States District Court, Central District of California that are referenced in his brief. The appropriate weight, if any, will be assigned to those references.

ISSUES⁴

1. From April 2006 to the 2007-2008 school year, did District fail to promptly or adequately assess Student in the area of assistive technology (AT)?
2. Did District fail to propose an assessment plan to better identify Student's deficits at the September 13, 2006 individualized education program (IEP) team meeting?
3. Is District required to reimburse Student for an independent educational evaluation (IEE) to determine his educational placement?
4. Did District deny Student a free appropriate public education (FAPE) beginning April 2006 through the 2007-2008 school year by the following:
 - a. Failing to offer goals to meet all of his needs?
 - b. Failing to offer interventions based on peer-reviewed research (PRR)?
 - c. Failing to allow him to use the applicable portion of the Language! program?⁵
 - d. Failing to offer specialized remediation strategies?
 - e. Failing to provide appropriate interventions related to his difficulties with oral communication?
 - f. Failing to meet his needs in the area of AT?
 - g. Placing him in a special day class (SDC) that was inappropriate?
 - h. Failing to timely convene the IEP team meetings?
 - i. Failing to inform Mother of her option to agree to only a portion of the IEP offer?
 - j. Predetermining his placement?
5. Did District deny Student a FAPE beginning April 2006 to the end of the 2006-2007 school by the following:
 - a. Failing to provide him an adequate level of staff support?
 - b. Failing to provide him one-to-one support in general education classes?
 - c. Failing to place him in the least restrictive environment (LRE)?
 - d. Failing to provide him with access to the general education curriculum?
 - e. From April to October 2006, failing to offer instruction in appropriate communication and strategies for self-regulation?
6. Did District deny Student a FAPE during the 2006-2007 school year by the following:

⁴ The issues were reorganized for this decision.

⁵ Language! is a reading and language arts program.

- a. Failing to provide adequate transportation services?
- b. Failing to implement the reading program?
- c. Failing to maintain the required student-to-teacher ratio?
- d. Failing to deliver required speech-language services?
- e. From September 13 to October 2006, failing to develop a behavior plan?
- f. From October 2006 to February 2007, failing to implement targeted instruction in appropriate communication and strategies for self-regulation?
- g. Failing to ensure District's offer in the May and June 2006 IEPs included all required information?
- h. Failing to have the May and June 2006 IEP teams consider Student's educational records?
- i. Failing to ensure the attendance of required team members at the May and June 2006 IEP team meetings?
- j. Refusing to allow Student to participate in the development of his class schedule?
- k. Failing to provide Mother with timely information regarding the registration process and new student activities?

7. Did District deny Student a FAPE for the 2006-2007 and 2007-2008 school years by the following:

- a. Failing to develop an effective plan for reducing inappropriate behavior?
- b. From February 2007 through the 2007-2008 school year, failing to utilize sufficiently skilled staff members to deliver instruction in appropriate communication and strategies for self-regulation?
- c. Failing to implement behavioral supports?
- d. Requiring Mother to unreasonably oversee implementation of Student's IEP?
- e. Requiring Mother to find and fund materials and instruction?
- f. Failing to include competitive wrestling in the IEP?

8. Did District deny Student a FAPE during the 2006 extended school year (ESY) and 2007 ESY because the programs:

- a. Lacked instructors sensitive to Student's needs?
- b. Failed to address Student's needs related to transitioning to high school?
- c. Placed him with inappropriate age and grade groups?
- d. Offered too low a level of instruction?
- e. Did not include use of appropriate behavioral strategies by his instructors?

- f. Did not address his deficits in key academic areas?
- 9. Did District deny Student a FAPE for the 2007 ESY and the 2007-2008 school year by failing to consider and offer Stowell Learning Center (Stowell) as the placement?
- 10. Did District deny Student a FAPE for the 2007-2008 school year by the following:
 - a. Failing to present the general education curriculum at a modified level, with sufficient staff support, including one-to-one instruction?
 - b. Failing to offer an adequate individual transition plan (ITP)?
 - c. Refusing to document the proposed placement at the September 2007 IEP unless Mother signed an IEP narrative?
 - d. Failing to properly implement Mother's partial consent to the proposed class schedule?
 - e. At the May 17 and September 6, 2007 IEP team meetings, failing to provide prior written notice?
 - f. At the May 17 and September 6, 2007 IEP team meetings, failing to provide a clear written offer of the District's proposed placement and services?

REQUESTED RELIEF

(1) Reimbursement for (a) Stowell's services through the 2008 ESY, including transportation; and (b) tutoring services, including transportation.

(2) Compensatory education services including: (a) Six hundred hours of academic instruction, to be used prior to Student's 25th birthday; (b) Speech and language services; (c) Funding for one year of sports training; (d) Individualized assistance to prepare for CAHSEE; (e) Individualized instruction to meet California's health standards; and (f) Removal of F grades from Student's transcript.

(3) Prospective placement including: (a) Continued placement in general education classes for the remainder of the 2007-2008 school year;⁶ (b) Three hours a day of intensive reading, language, and math instruction, including remediation; with semester credits awarded for participation and attendance; (c) Services at Stowell to complete Student's current curriculum, and District shall seek a waiver of the certification requirement for Stowell until an appropriate alternative is identified; or, in the alternative, services from Lindamood Bell, or a similar nonpublic agency (NPA), or an appropriate nonpublic school (NPS), (d) An inclusive program; (e) All special education and related services provided for 48 weeks a year, and general education services provided during the school year and summer school; (f) Portable AT and instruction in keyboarding and organizational skills; and (f) An

⁶ District agreed to maintain Student in general education classes through the end of the current school year without acknowledging that it was a FAPE.

updated behavior plan to address all problematic behaviors, including those that are not socially appropriate.

(4) An IEP team shall convene to address the following: (a) Awarding credit for Student's work at Stowell; (b) Student participating in the graduation ceremony and receiving a document that is neither a diploma, nor a certificate of completion; (c) Student working on activities to obtain a diploma following his normal graduation date; (d) Student choosing elective classes; (e) Student participating in physical education each school year; and (f) Student fully participating in the wrestling team with all necessary accommodations.

FACTUAL FINDINGS

Background Information

1. Student is a 16-year-old boy currently in the 10th grade at West Covina High School (High School). District found him eligible for special education services during preschool. Student also attended school in the Oakland Unified School District (Oakland) and in New Mexico from Albuquerque Public Schools (Albuquerque) during seventh grade and most of eighth grade. Student returned to District in April 2006 to finish eighth grade while Mother remained in New Mexico to finish a medical residency program. Mother appointed Student's grandmother as educational representative. On April 28, 2006, Grandmother consented to an interim placement in Mr. Luna's SDC at District's Hollencrest Middle School (Hollencrest). Student also had a positive behavior intervention plan. District determined that it would review the interim placement and conduct an IEP team meeting by May 30, 2006.

2. Student's eligibility results from his diagnosis of Opsoclonus-Myoclonus Syndrome (OMS), a rare neurological condition that primarily affects infants and toddlers. OMS results in a range of neurological disorders that can impact fine and gross motor functions, balance, cognitive abilities, emotional functioning, and speech, among others. Student is one of approximately 4,600 individuals in the United States diagnosed with OMS. Recent research conducted by one of Student's physicians found that children with OMS have shown improvement in their cognitive scores and speech and motor functioning over time. The prognosis is better for children who do not have relapses of OMS symptoms requiring treatment. Student has had such relapses.

Assessment in the Area of AT

3. Student contends that District did not promptly or adequately assess Student in the area of AT. District contends that it adequately assessed Student in May 2007, after Mother requested it.

4. None of the Albuquerque IEPs noted that Student needed AT devices or services. Trudy Norman, Student's teacher during 2006 ESY, described Student as having

good ideas, but he could not write them down. He frequently did not complete written work and he had a hand tremor when he wrote and cut paper. Student had difficulty with handwriting during ninth grade while in Jeanne Venetianer's SDC at the High School. District's triennial assessment report, reviewed at the September 13, 2006 IEP team meeting, noted that Student's OMS was associated with his tremor and unsteady gait. The September 26, 2006 IEP noted that Student suffers from intension tremor, which affects fine motor skills. Both the May 25 and September 26, 2006 IEPs indicate that Student did not need AT. However, there is no evidence that Student's need for AT was discussed at either of those meetings.

5. Although District's assessment report did not address Student's need for AT, the IEP team had information that he experienced hand tremors that impacted his fine motor skills. Ms. Venetianer, who attended the September 13, 2006 IEP team meeting, had reason to know that Student's work production may have been hindered by his labored handwriting. While the May 25, 2006 IEP has a box marked indicating Student did not need AT, there is no evidence that the IEP team at either the May 25th or September 13th meeting actually considered whether he needed AT. Based on the information available to the team, it should have determined that Student needed to be assessed for AT at the September 13, 2006 meeting. Mother requested an AT assessment at the IEP team meeting on May 17, 2007. In a letter dated May 24, 2007, District approved Mother's request.

6. Student also contends the AT assessment was not adequate. Ms. Norman holds a master's degree in special education and both multiple subject and special education teaching credentials, and has taught for District for 12 years. She currently teaches sixth through eighth graders at Hollencrest. Her training to conduct an AT assessment consisted of a two-week, 100 hour course at California State University, Northridge, that she attended six or seven years ago.

7. On June 12, 2007, District sent Mother a 10-page questionnaire requesting information for the AT assessment. Mother never completed the questionnaire because Ms. Norman, who performed the assessment, told her the assessment would not be done until the fall; in the fall, she told Mother not to bother filling it out. Ms. Norman spoke with Mother, who told her that she was interested in AT that would help Student get his work done faster.

8. The assessment, which was conducted in October 2007, consisted of having Student work with three devices: a portable keyboard/word processor that is smaller and lighter than a laptop computer; a portable keyboard/word processor that can read text aloud that is written by a student; and a voice-activated program. Ms. Norman's report described the three devices, how Student used them during the assessment, and Student's feedback about the devices. Ms. Norman recommended that Student improve his typing skills so that he could successfully write faster using one of the devices.

9. District's AT assessment was not designed to provide all relevant information to assist the IEP team in determining whether Student's educational needs required AT. The

assessment did not obtain any detailed information from Mother concerning Student's needs or abilities, such as was included in the questionnaire sent to Mother. While the exploration of Student's use of equipment readily available to the District was reasonable, it was not sufficient to determine whether Student's functioning could be improved. Insufficient time was spent exploring the voice-activated device to determine whether or not it was a viable option. Therefore, District did not conduct a legally adequate AT assessment of Student.

Need for Further Assessment at the IEP Team Meeting of September 13, 2006

10. Student contends District failed to propose assessment plans at the September 13, 2006 IEP team meeting to better identify his deficits. Student does not identify the areas in which he believes District should have provided further assessment.

11. Student's triennial review was overdue when he enrolled in the District. On June 14, 2006, District received Mother's consent to perform the triennial assessments. The assessment plan states that District will conduct assessments in the areas of social, emotional and adaptive behavior; psychological processing and/or motor development; intellectual/cognitive development; academic achievement; and health/developmental. The IEP team met on September 13, 2006, to discuss the results of the triennial assessment.

12. Bonnie Marker, School Psychologist at Hollencrest, prepared the multidisciplinary assessment report. Ms. Marker holds master's degrees in psychology and educational psychology, and a clear pupil personnel services credential in school psychology. She worked for six years as a school psychologist and two years as a program specialist for District. She reviewed available educational records, interviewed Mother, and observed Student in the classroom. Ms. Marker administered the following assessment instruments: the Das-Naglieri Cognitive Assessment System (CAS); Burks Behavior Rating Scales (Burks); Vineland Adaptive Behavior Scales – Survey Edition (Vineland); Test of Auditory Processing Skills (TAPS-3); Test of Visual-Perceptual Skills (Non-Motor), Upper Level – Revised (TVPS); and Beery Developmental Test of Visual-Motor Integration, 4th Edition (VMI). Jim Luna, Student's teacher in the SDC at Hollencrest, administered the Woodcock-Johnson Tests of Achievement III (WJ-III). Ms. Marker administered her assessment instruments in June and Mr. Luna administered the WJ-III in May 2006.

13. The CAS measures intelligence as a group of cognitive processes: planning, attention, simultaneous processing, and successive processing. Student's scores are in the intellectually deficient range in planning and attention, and in the borderline range in simultaneous and successive processing. The Burks was completed by Mother and assesses social-emotional functioning. The scores are rated as very significant in the areas of poor intellectuality, poor academics, poor attention, and poor impulse control. Student's scores on the Vineland, which assesses adaptive behavior in three domains: communication, daily living skills, and socialization, are all in the severely deficient range, below the first percentile. The TAPS-3 measures aspects of auditory skills necessary for the development, use and understanding of language commonly used in academic and daily activities. Student's scores are within the deficient range. The TVPS measures nine aspects of visual

perception. Student's scores range between the first and seventh percentiles, except for visual discrimination, which is in the 25th percentile and visual spatial relationships, which is in the 90th percentile. Student's score on the VMI, which measures visual-motor integration, is in the well below average range, in the seventh percentile. Student's WJ-III cluster scores in broad reading, broad math, math calculation, broad written language, and written expression are all in the very low range and in the first percentile or lower. His oral language cluster score is in the low average range and in the 15th percentile.

14. Ms. Marker recommended that Student be found eligible for special education in the primary category of other health impairment and in the secondary category of mental retardation, and that his current behavior intervention plan be implemented. She did not recommend any further assessments.⁷ There is little evidence concerning the IEP team's discussion of the assessment report. Mother was pleased that District found that Student's primary eligibility category was other health impairment and not mental retardation.

15. Mitchell D. Perlman, Ph.D., holds a doctorate in clinical psychology, and has extensive experience performing assessments involving children with special needs for parents, school districts, and courts. He has regularly performed IEEs, and has done them about equally for parents and school districts. Dr. Perlman conducted a neuropsychological assessment of Student in March 2008. Dr. Perlman reviewed the District's assessment as part of his own review of Student's records. While Dr. Perlman's assessment provides additional, detailed information about Student's capacity to learn and the challenges he faces, it did not identify shortcomings with District's assessment. While Dr. Perlman recommended that Student be referred to a developmental optometrist for a vision therapy assessment, neither his report nor his testimony explained the basis for this recommendation. The evidence does not support a finding that District should have provided an assessment plan for a vision therapy assessment. Nor does the evidence support a finding that further assessment in any area was warranted.

Request for IEE

16. Student contends that District must provide him an IEE because Mother requested one at the May 17, 2007 IEP team meeting to determine his educational placement, and District failed to either provide it or request a due process hearing to show that its assessment was appropriate.

17. At an IEP team meeting on May 17, 2007, Mother requested in writing that District provide an assessment at public expense by an NPS and by Stowell. She further requested, in addition to or instead of the assessment by Stowell, that District provide an evaluation of Student's needs and appropriate program at public expense. At the time of Mother's request, Stowell was an NPA that provided remedial educational programs. While Mother expressed her disagreement about District's offered program for the 2007-2008 school year, there is no evidence that she expressed disagreement about any of District's

⁷ A separate speech and language assessment was also conducted.

assessments prior to filing the complaint that is the subject of this hearing. Accordingly, Student is not entitled to an IEE at public expense.

April 2006 through the 2005-2006 School Year and 2006 ESY

Student's Unique Needs

18. It is undisputed that beginning April 2006 and continuing to the 2007-2008 school year, Student had unique needs in the areas of reading, written expression, mathematics, and speech/language. Student contends that he also had needs in the areas of science, health, social science, arts, telling time, phonemic awareness, decoding, social/functional/ emotional/development, auditory processing, visual processing, behavior, and self-help skills.

IEP of May 25, 2006

19. The IEP team met on May 25, 2006, to review Student's interim placement. Student's results on the WJ-III, which had been administered on May 2, were used as his present levels of performance. Based on the WJ-III, the IEP team established that Student had needs in the areas of decoding (letter-word identification), reading comprehension, written expression, writing fluency, math calculation, math fluency, and math reasoning. The IEP team also identified needs in the areas of calculations involving money, and speech/language. The results on the WJ-III establish that Student had additional needs in the areas of reading fluency and spelling.

20. A box is checked on the IEP indicating that Student's behavior did not impede his or others' learning. There is no evidence of whether the team reviewed Student's behavior support plan from Albuquerque, or how the team determined that Student did not have any needs in the area of behavior. However, there is no evidence that at the time of this meeting Student had behavioral needs. Student did not show that he had unique needs in any other area.

2006 ESY

21. Ms. Norman taught Student during the 2006 ESY. Student was the most behaviorally challenged of the 20 students she had in the class. He used inappropriate words, did not perform his work, and was noncompliant. On one occasion, he hit another student. On another occasion, Student created a disturbance in the classroom by sprawling out on his desk and the floor, and Ms. Norman was unable to remove him from the classroom. The behavior was serious enough that Ms. Norman sought the assistance of a school psychologist, called Mother to pick Student up on one occasion, and called Mother for assistance on other occasions. Ms. Norman's experience with Student establishes that during 2006 ESY, he had behavioral needs concerning inappropriate verbal expressions, work completion, and noncompliance. Student did not have needs in any additional areas.

Annual Goals

22. Student contends that from April 2006 through the 2007-2008 school year, District failed to offer him sufficient goals in reading, written language, and math, and failed to offer any goals in science, health, social science, arts, telling time, phonemic awareness, decoding, social/functional/emotional development, auditory processing, visual processing, behavior, and self-help skills.

IEP of May 25, 2006

23. There is no evidence in the record that District offered any goals prior to the IEP team meeting of May 25, 2006. Grandmother, who attended on behalf of Mother, did not consent to implementation of the IEP. District offered four goals, one each in reading comprehension, written expression, math reasoning, and simple calculations involving money. Each of these goals meets a need resulting from Student's disability and will assist his progress in the general curriculum.

24. The May 25, 2006 IEP did not include goals in all areas of Student's need. As determined in Factual Findings 19, Student had additional needs in the areas of decoding, reading fluency, writing fluency, spelling, and math calculation.

25. District used Student's WJ-III score in letter-word identification, which is a measure of decoding skills, in the present level of performance for the reading comprehension goal. However, neither the goal nor the record indicates how it addresses decoding. Further, there is no evidence showing how Student's needs in the area of reading fluency were to be met. The evidence shows that District did not offer goals meeting Student's needs in the areas of decoding and reading fluency.

26. The present levels of performance for the written expression goal use Student's WJ-III scores in writing fluency and spelling. However, there is nothing in the goal or the record indicating that these areas are also being addressed. The evidence establishes that the goals District offered did not meet Student's needs in the areas of writing fluency and spelling.

27. The present levels of performance for the math reasoning goal include Student's WJ-III scores in math calculations and math fluency. The math reasoning goal requires Student to break problems into simpler parts, but does not require him to perform any math calculations. The goal involving simple calculations with money requires Student to perform some math calculations. However, since his WJ-III score in math calculations is a grade equivalent of 3.5, this does not meet all of Student's needs in the area of math calculations. The evidence establishes that Student's needs in the areas of math calculations and math fluency were not met by the goals District offered.

28. Student contends that District should have offered him goals in other academic areas, including science, health, social science, and the arts, because they are either required

for high school graduation or are included in the general education curriculum. Dr. Smith, District's Director of Special Education at the time, and Ms. Windemuth, Assistant Principal for Curriculum and Instruction at High School, testified that District does not write goals in specific content areas of the curriculum, but instead writes goals to develop the underlying skills a student needs in order to make progress in the curriculum. For example, skills in the area of reading comprehension and vocabulary are needed to make progress in science and social science. While it is conceivable that under certain circumstances, a student may require a goal in one of these other academic areas, the evidence does not establish that Student required goals in science, health, social science, and the arts at any time.

29. Based on Factual Findings 25 through 27, District failed to offer goals meeting Student's needs in the areas of decoding, reading fluency, writing fluency, spelling, math calculations, and math fluency. Because so many areas of need were left unmet, the goals that were offered are not reasonably calculated to provide educational benefit to Student. Accordingly, District's failure to offer goals in these areas denied Student a FAPE from April 2006 through 2006 ESY.

PRR-Based Interventions and Remediation Strategies

30. Student contends that, beginning April 2006 through the 2007-2008 school year, District failed to offer necessary PRR-based special education services. He argues that to the extent District used Language!, a PRR-based reading program, it used it at a level that was much lower than Student needed. Student claims that District failed to offer specialized remediation strategies, specifically in reading. Although Student alleged that District generally failed to offer PRR-based interventions, he presented evidence concerning only District's reading program. Accordingly, other areas of Student's program will not be addressed.

31. There is no evidence in the record concerning the nature of the special education interventions used in Mr. Luna's classroom. Student has not shown that from April 2006 to the end of the 2005-2006 school year, District did not offer him PRR-based interventions, did not use the Language! Program appropriately, and did not offer necessary remediation strategies.

32. Ms. Norman taught Student language arts and writing in the 2006 ESY. Students worked at their own level and pace using the SRA reading program.⁸ The SRA reading program is systematic and self-paced and can be used as a remedial program. At the beginning of summer school, Ms. Norman provided instruction in phonics using a Lindamood Bell program, which is a PRR-based program. Ms. Norman established that District offered Student PRR-based reading intervention during 2006 ESY. There is no evidence that Language! was used during 2006 ESY. Student has not shown that District did not offer necessary remediation strategies during 2006 ESY.

⁸ The record does identify the acronym.

Services and Interventions Addressing Oral Communication

33. Student contends that from April 2006 through the 2007-2008 school year, District failed to provide appropriate interventions related to his difficulties with oral communication. As determined in Factual Finding 20, Student did not have any identified needs in the area of oral communication from April 2006 through 2006 ESY.

AT Assistance

34. Student contends that from April 2006 to the 2007-2008 school year, District failed to meet his needs in the area of AT. Based on Factual Finding 5, there is no evidence Student had need for AT prior to September 2006. Therefore, District did not fail to meet his needs for AT from April 2006 to 2006 ESY.

Level of Staff Support

35. Student contends that from April 2006 through the 2006-2007 school year, District failed to provide him the necessary level of staff support, including one-to-one support in general education classes. There is insufficient evidence to determine the level of staff support Student received or needed while in Mr. Luna's SDC. Student's SDC during 2006 ESY had 20 students and five staff, for a student-to-teacher ratio of four to one. Ms. Norman provided him reading instruction in a group of 10 students. The class was divided into four groups for math instruction. Student did not show that he needed additional staff support during from April 2006 to 2006 ESY.

Behavioral Services and Interventions

36. Student contends that District failed to offer instruction in appropriate communication and strategies for self-regulating in stressful situations from April to October 2006. As determined in Factual Finding 20, Student did not have any behavioral needs from April 2006 to the end of the 2005-2006 school year. District was not required to offer any behavioral services during this time period. The 2006 ESY is discussed in Factual Findings 39 through 50.

Placement in an SDC

37. Student contends District placed him in an SDC from April 2006 through the 2007-2008 school year that was inappropriate due to the low level of instruction and inappropriate peer group. District contends that Student's placement in the SDC was the appropriate placement to meet his needs based on all the information they had.

38. Bonnie Marker, school psychologist at Hollencrest, was responsible for making Student's initial placement into Mr. Luna's SDC. The last IEP from Albuquerque recommended that Student be placed in some SDC classes. Based on the information she

reviewed, she determined that an SDC was comparable to his prior placement.⁹ There is no evidence concerning either the level of instruction or the peer group in Mr. Luna's class. Therefore, Student did not establish that the placement did not meet his needs in those areas.

Placement for 2006 ESY

39. Student contends District did not provide an appropriate program during the 2006 ESY and 2007 ESY because the programs lacked instructors sensitive to his needs; failed to address his needs related to transitioning to high school; placed him with inappropriate age and grade groups; offered too low a level of instruction; did not include appropriate behavioral strategies; and did not address his deficits in key academic areas. District contends that Student made progress in, and benefited from, the 2006 ESY program.

40. As determined in Factual Finding 21, Student had behavioral needs during 2006 ESY in the areas of inappropriate verbal expressions, work completion and noncompliance. Although Ms. Norman did not ordinarily use a reward system in her classroom, when she learned that it could motivate Student to do his class work, she allowed him to help the custodian or have some candy as rewards.¹⁰ She found that using rewards with Student was sometimes helpful, and sometimes, not. According to Ms. Norman, an IEP team meeting was not convened to address Student's behavior because no general education teachers were available during the summer. Ms. Norman's testimony was not disputed.

41. Ms. Norman made an effort to try to reduce Student's problematic behavior, with mixed results. Weighing all of the evidence, it is more likely than not that Student's behaviors were triggered by stress. The evidence shows that District should have offered Student instruction in appropriate communication and strategies for self-regulating in stressful situations during 2006 ESY.

42. Ms. Norman taught Student reading and language arts and Ms. Klotz taught him math during 2006 ESY. The program for students just finishing sixth through eighth grade lasted five weeks and took place at Hollencrest. As determined in Factual Finding 40, Ms. Norman used a reward system to attempt to motivate Student when he had behavioral difficulties, and she also sought help from the school psychologist. She utilized specialized techniques to assist the class with developing phonics skills. There is no evidence concerning Ms. Klotz, her teaching strategies, or how she interacted with Student. Student has not established that the instructors during 2006 ESY were insensitive to Student's needs.

43. There is no evidence that Student had needs related to the transition to high school that were not met. In the past, ESY for entering ninth graders, like Student, had been

⁹ Student raised, for the first time in his closing brief, the contention that District did not comply with its obligation to place him into a program with services comparable to those in his previously approved IEP from Albuquerque. This was not at issue in the hearing and will not be decided.

¹⁰ A reward system aims to motivate appropriate behavior by providing the student a reward for performing as expected.

held on High School's campus. It was held at Hollencrest because there was construction at High School. While being on High School's campus the summer before entering ninth grade would have assisted Student's transition to high school, this is true for every graduating eighth grader who was entering High School. There is no evidence that Student had a unique need for assistance with transitioning to High School. Student did not establish that District failed to address his needs concerning his transition to High School.

44. Student contends that he was placed with inappropriate age and grade groups. Students in the ESY class had just finished sixth through eighth grades, so Student was among the oldest group of students in the class. Student's reading group had students at the first through third grade levels, but their ages are not known. Even assuming that the rest of Student's reading and math groups had just finished sixth grade, a two-year age difference between Student and the others is not, by itself, inappropriate. Student has not established that he was placed with inappropriate age and grade groups.

45. Student contends that the level of instruction was too low to meet his needs. Student's reading materials were at the third grade level and complied with the third grade curriculum standards. The subject matter of the reading worksheets included the circus, "Rumplestiltskin," "The Three Little Pigs," and landmarks located in Washington, D.C. The worksheets included activities such as underlining pictures of containers, such as a cup or glass, and circling pictures of animals, such as a cat or horse. According to Ms. Norman, the materials were used for children in first through third grades and also for adults, and were thematically appropriate for high school students.

46. Student expressed an interest in reading higher level materials, but he could not answer questions probing his comprehension of the materials. Mother sincerely expressed that she believed that it was demeaning for Student to have to do work sheets involving "The Three Little Pigs" and circling pictures of common items. She observed that the amount of work he produced was minimal and that he made mistakes on things that he was previously able to do. Ms. Norman acknowledged Student regressed in reading during ESY. She attributed his regression to his not doing the reading required by the program. She denied that the regression was caused by the curriculum, because "reading is reading" in her view.

47. While "The Three Little Pigs" is not subject matter that would normally interest a 14-year-old boy, there is insufficient evidence that the subject matter was detrimental to Student's progress. There is evidence that during 2006 ESY, Student had behavioral difficulties, did not complete his work, and did not make progress in reading. However, it is too great a leap, without other evidence, to attribute any of these to reading materials involving fairy tales or other subject matter generally geared for elementary school children. Student has not established that the level of instruction was too low to meet his needs.

48. Next, Student contends that the instructors failed to use appropriate behavioral strategies. As determined in Factual Finding 40, Ms. Norman used an informal reward

system with Student. She allowed him to help the custodian or have some candy as rewards for completing work. One of the rewards, to go help the custodian, allowed him to avoid doing school work, which was a problematic behavior for him. As determined in Factual Finding 41, District should have offered Student instruction and strategies for self-regulating in stressful conditions. Based on these determinations, Student established that the instructors did not use appropriate behavioral strategies.

49. Finally, Student contends that District did not address his deficits in key academic areas. Ms. Norman acknowledged that he regressed in reading and made little progress in many areas because he did not consistently perform the work. It is likely that District's failure to use appropriate behavioral strategies to meet Student's needs resulted in his inability to successfully complete work and benefit from the program. Student established that the 2006 ESY program did not meet his needs in the area of reading.

50. As determined in Factual Findings 41, District did not offer, during the 2006 ESY, any behavioral services to assist Student to self-regulate, and did not develop a plan to reduce his inappropriate behaviors. As determined in Factual Findings 48, District failed to ensure that instructors during 2006 ESY used appropriate behavioral strategies. As determined in Factual Findings 49, District did not meet his needs in the area of reading during 2006 ESY. District's failure to meet Student's behavioral needs likely resulted in Student's regression in reading and failure to make progress. District denied Student a FAPE during 2006 ESY.

LRE and Access to General Education

51. Student contends that from April 2006 through the end of the 2006-2007 school year, District failed to place him in the LRE, or provide him with access to the general education curriculum. District claims that the SDC placement and Student's general education participation in physical education, lunch, recess, assemblies, rallies, and career day met his needs in the LRE.

52. Mother testified credibly that before Student entered the District in April 2006, she spoke with Kathy Turney, the counselor at Hollencrest, who told her that District was planning to place Student in an SDC. Mother explained that Student was in full inclusion classes in Albuquerque, except for reading, and had close special education support and supervision. She was told that District did not have any program like that for Student. At the May 25, 2006 IEP meeting, District offered to continue his SDC placement at Hollencrest for the remainder of the school year.

53. Ms. Marker, a member of the IEP team, relying upon the results of Student's assessments and Mr. Luna's reports that Student was doing well in his class, believed that a general education classroom was not appropriate because he was functioning at a lower level and had behavioral difficulties. There is no evidence about any other classroom placement options available at Hollencrest. Weighing the evidence, Student has not established that District failed to place him in the LRE, or provide him with access to the general education

curriculum for the remainder of eighth grade at Hollencrest. Similarly, there is no evidence concerning placement options or access to the general education during the 2006 ESY. Student has not established that District committed the alleged violations during 2006 ESY.

Holding Timely IEP Team Meetings, Informing Mother Regarding Partial Consent, and Predetermining Placement

54. Student contends from April 2006 through the 2007-2008 school year, District failed to timely convene the IEP team meetings; failed to inform Mother of her option to agree to only a portion of the IEP offer; and predetermined his placement based on service availability and logistical convenience. District contends that it convened all IEP meetings within the required timelines, and informed Mother of her option to agree to portions of its offer. District contends it did not predetermine Student's placement because Mother was actively involved in the IEP process and all aspects of his educational placement.

55. Mother requested a meeting in June 2006 to discuss Student's program for the following year. She testified that this meeting did not occur and she had to wait until August to meet to discuss Student's high school schedule. The evidence shows that an IEP team meeting was held on June 9, 2006, with staff from Hollencrest and Ms. Venetianer from High School. The IEP indicates that Student's schedule for the upcoming year was discussed. According to the IEP, the team agreed that it would meet in the fall to conduct Student's triennial review. Student did not establish that District did not convene a timely IEP meeting in June 2006, or at any time through the 2006 ESY.

56. District's notice of parents' rights and procedural safeguards informs parents that they may consent to some components of an IEP and those components will be implemented. District staff credibly testified that a copy of the notice of procedural safeguards was given to Grandmother at the May 26, 2006 IEP meeting, when Mother was still in New Mexico. District staff offered to fax a copy to Mother, but Grandmother insisted that she would give it to her. Even if Mother never received a copy of the notice, she testified that she was aware of her ability to consent to only portions of what District offered to Student. Student has not established that District failed to inform Mother of her ability to consent to a portion of its offer at any time.

57. Even before Student enrolled in the District, Mother made her desires clear to staff, including some of District's members of the IEP team, that she wanted Student to be in a challenging and stimulating academic environment. She described the program he had in Albuquerque as a full inclusion program. There was little evidence about the May 25, 2006, IEP team meeting and the nature of the discussions, if any, concerning the options considered by the team. Student has not established that District predetermined his placement for the period April 2006 through 2006 ESY.

Contents of IEP

58. Student contends that District failed to ensure its offer for the 2006-2007 school year as contained in the May and June 2006 IEPs included all required information, specifically: accommodations; a behavior plan; assistance with Student's transition to high school; ESY; and consideration of a less restrictive placement. District claims that it prepared an IEP that met all requirements.

59. The May 25, 2006 IEP indicates that Student needed accommodations and modifications. However, the page that is supposed to list accommodations is blank. The June 9, 2006 addendum did not address accommodations or modifications. Student established that the May and June 2006 IEPs did not include information concerning accommodations and modifications.

60. The May 25th IEP indicates that Student does not require a behavior plan. It does not indicate whether his behavior impeded his learning or that of others.¹¹ No behavior plan is attached. The June 2006 IEP amendment does not address Student's behavior. While the evidence shows that District should have addressed Student's behavior needs prior to October 2006, it does not show that those needs were identified until ESY 2006. Neither the May nor June 2006 IEP was required to include a behavior plan.

61. Neither the May nor June 2006 IEP addresses Student's transition to high school. The law does not require District to address Student's transition *to* high school, only his transition *after* high school, unless he otherwise has a unique need in that area. There is no evidence that Student had a unique need concerning his transition to high school. The evidence does not establish that District was required to include anything in the May or June IEPs concerning his transition to high school.

62. The May 2006 IEP indicates that Student required ESY. There is nothing in the IEP concerning the nature of the ESY services offered, or their location, frequency or duration. None of this information was provided in the June 2006 addendum. District failed to include required information concerning the ESY services offered in the May 2006 IEP.

63. The only indication in the May 2006 IEP concerning the team's rationale for placing Student in a more restrictive environment than a general education classroom are two boxes which are checked indicating that supplemental aids and services were considered and/or tried within a general education setting; established goals and objectives cannot be met in a general education setting without the support of special education and/or related services; the placement is necessary to meet established goals and objectives; and the placement is located at the school of residence. The IEP does not indicate why Student's disability prevents his needs from being met in a less restrictive environment even with the

¹¹ The IEP form states, "Does the student's behavior impede learning and require a Behavior Teaching Plan?" Two boxes follow, one labeled "Not needed," the other, "Needed, see form 2.0h." The box labeled, "Not needed" was marked on the May 25th IEP. However, one cannot discern whether the team determined that his behavior did not impede learning, or it did, but he did not need a behavior plan.

use of supplementary aids and services. The June 2006 addendum does not address the rationale for Student's placement. Student established that District did not include its rationale for placing Student in a more restrictive setting than a general education classroom in either the May or June 2006 IEP.

64. As determined in Factual Findings 59, 62, and 63, District failed in the May 2006 IEP to include any proposed accommodations or modifications to meet Student's needs, any information concerning the ESY services being offered, and inadequate documentation of the rationale for placing Student in a more restrictive environment than a general education classroom. Grandmother attended the May 2006 IEP team meeting on behalf of Mother. There is no evidence concerning the impact these omissions had on Grandmother's ability to participate in the IEP meeting, or Mother's ability to participate through Grandmother. However, reasonable and logical inferences can be drawn based on the evidence. Neither Grandmother nor Mother can prepare or adequately participate when they do not have information about what District is offering regarding accommodations or ESY services, or the rationale for a proposed classroom placement being the LRE. It is irrelevant, as District argues, that Mother instructed Grandmother not to consent to what was offered. District's failure to provide this required information denied Grandmother, and by extension, Mother, an opportunity to participate in the discussion, obtain information about District's offer, and to meaningfully develop Student's educational program. As a result, District denied Student a FAPE. District did not commit any of the other violations alleged in this issue.

Consideration of Educational Records and Documentation of Student's Unique Needs

65. Student contends that District failed to have the May and June 2006 IEP teams consider Student's educational records and document his needs. District contends that it had considerable difficulty obtaining Student's education records from his prior school districts. However, District claims that it carefully considered the documents it did receive. District contends that it accurately documented his needs in the IEP.

66. District had difficulty obtaining copies of Student's educational records from Albuquerque. The records were requested several times, and the records received were not complete. Mother also faxed copies of Student's records to the District. The evidence shows that at least some of the information in the records was considered. The evidence does not show when District received Student's educational records and whether the IEP team considered the information from them prior to the beginning of the 2006-2007 school year. The evidence shows that District took reasonable steps to promptly obtain Student's records, and the IEP team considered the information they obtained. Student did not show that the May and June 2006 IEP teams failed to consider his educational records.

67. The May 2006 IEP does not include a specific area in which the team documented Student's unique needs. An area on the IEP summarizing Mother's view of his strengths and areas of concern includes her view of his needs. In addition, the present levels of performance for each goal identify Student's needs, either expressly or indirectly.

Accordingly, the evidence shows that the May 2006 IEP documented Student's needs, as determined by the IEP team, and the services the team determined were needed to meet the needs and provide a FAPE.

Composition of IEP Team

68. Student contends District failed to schedule the May 2006 IEP team meeting to allow Mother to participate, and failed to ensure the attendance of the speech therapist; and failed at the June 2006 IEP team meeting to ensure the attendance of the speech therapist, special education director, a special education teacher, a general education teacher, and a high school teacher. District claims that it was unable to delay the May 2006 IEP team meeting because Student's interim placement could not exceed 30 days without being reviewed. District also argues that Student's grandmother, who had been assigned Student's educational rights, attended the meeting. District contends that the required members attended the IEP team meetings.

69. On April 28, 2006, District and Grandmother, whom Mother appointed Student's educational representative, authorized Student's initial placement at Hollencrest. District scheduled an IEP team meeting for May 25, 2006, to review this initial placement. Mother, due to arrive in California around June 5, requested that the meeting be postponed. District conducted the meeting with Grandmother on May 25, 2006.

70. District was mistaken in believing that it was legally required to conduct an IEP team meeting to review Student's initial placement within 30 days. This requirement applies to students transferring from districts within California, not from districts outside the state. While District was not legally required to conduct the meeting when it did, it must be determined whether it was legally prohibited from doing so.

71. When Mother assigned her educational rights concerning Student to Grandmother, Grandmother 'stepped into Mother's shoes' in terms of Student's educational rights. Legally, it was as if Mother attended the meeting. Therefore, District was not prohibited from conducting the meeting on May 25, 2006.

72. Student correctly contends that a speech and language therapist did not attend the May 2006 IEP team meeting. However, Mr. Luna, Student's teacher at Hollencrest, was a member of the team. The team was required to include at least one of Student's special education teachers, or one of the special education providers. Since Mr. Luna attended, there was no requirement that a speech and language therapist also be present. The evidence does not show that District was required to have a speech and language therapist attend the May 2006 IEP team meeting.

73. The members of the IEP team at the June 2006, meeting were Mr. Luna; Mary Boddie, speech and language therapist; Ms. Turney, counselor at Hollencrest; Ms. Venetianer; Joseph Jones, school psychologist from High School; Ms. Marker; Mother; and Student. The team included a speech therapist and two special education teachers:

Mr. Luna, and Ms. Venetianer, from High School. Student did not show that the IEP team required an additional teacher from High School.

74. It is undisputed that a general education teacher did not attend the June 2006 meeting. District contends that one was not required at the meeting because Student was in an SDC at Hollencrest and District proposed to place him in an SDC at High School. District's view is mistaken. It was likely that Student would be participating in the general education environment in High School, since District included a general education physical education class in its May 2006 offer. A general education teacher was required to attend the meeting. Student established that District failed to include a general education teacher in the IEP team at the June 2006 meeting.

75. The evidence is undisputed that District's director of special education did not attend this meeting. There is no evidence that the role required of a representative of the District could only be met by the director of special evidence. Accordingly, District was not required to have the director of special education attend the June 2006 IEP team meeting.¹²

76. Based on Factual Finding 74, District failed to include a general education teacher at the June 2006 IEP team meeting. This was the first IEP team meeting that Mother attended. The purpose of the meeting was to discuss Student's transition to High School. District offered Student, in the May 2006 IEP, a general education class for physical education. There is no direct evidence about what impact, if any, the absence of a general education teacher had on Mother's opportunity to participate. However, given Mother's expressed desire to have Student participate in the LRE, including general education, a reasonable inference can be drawn that Mother was denied an opportunity to meaningfully participate in the IEP process. Therefore, District denied Student a FAPE.

2006-2007 School Year

Student's Unique Needs

IEP Team Meetings of September 13 and 25, 2006

77. The results of Student's assessment were presented and discussed at the September 13, 2006 IEP team meeting. The assessment report noted Student's use of inappropriate language and limited social skills. Mother expressed her concerns to Ms. Marker that Student had difficulty with social skills and did not have friends. Ms. Marker reported that Mr. Luna, who taught Student's SDC at Hollencrest, noted some difficulties with social skills, and use of inappropriate language. Ms. Marker observed Student in his math class in June 2006. He did not exhibit any behavioral problems.

¹² Student did not allege that District failed to have a representative who had the requisite knowledge concerning specially designed instruction, general education curriculum, and the availability of resources; this issue is not decided.

78. As determined in Factual Finding 13, Student's results on the Vineland show that Student's adaptive skills are very low, his results on the TAPS-3 are very low, and most of the results on the TVPS are low. However, there is insufficient evidence showing what these results indicate, if anything, about Student's unique needs. The IEP's transition plan establishes that Student had needs in the area of self-help concerning telling time and grooming.

79. In her assessment report, Ms. Marker recommended continued implementation of Student's behavior plan. Neither the assessment report nor Ms. Marker identified the behavior plan to which she referred. Mother identified a behavior plan from Albuquerque dated February 6, 2006, as the plan that was in effect when Student left Albuquerque. Based on this, it is found that this is the plan that Ms. Marker recommended to be continued. The Albuquerque plan identified three targeted behaviors: inattention, off-task behavior, and inappropriate language.

80. Mother reported to the team that in the past, Student exhibited aggressive behavior, including self-injurious behavior, and threats to others, work avoidance behaviors, violation of others' personal space, including eating others' food, and inappropriate comments concerning weapons, gangs, and drugs, and cussing and using racial slurs. She expressed her concern that these behaviors needed to be addressed.

81. According to District staff, they did not observe any behavior at school that led them to believe that Student had behavioral needs until the October 10, 2006 IEP team meeting. Reports of Student's behavior during Ms. Norman's 2006 ESY class were described by District staff as "isolated incidents." However, the evidence shows they were not isolated. The existence of a behavior plan in Albuquerque, Student's conduct during 2006 ESY, information in the assessment report concerning Student's behavior in Mr. Luna's class, Ms. Marker's recommendation that the behavior plan from Albuquerque continue to be implemented, and Mother's concerns about behavior, establish that Student continued to have needs in the areas of inappropriate verbal expressions, work completion, inattention, off task behavior, and noncompliance. There is insufficient evidence that Student was exhibiting aggressive behavior, or that any violation of other's personal space, such as eating others' food, was impeding his learning or that of others.

82. The present levels of performance identified in the September 25 IEP, establish that Student continued to have the needs identified at the May 2006 meeting as determined in Factual Finding 19. The IEP also shows that he had needs in the areas of access to quality literature, vocabulary and verbal expression, and no longer had a need in the area of counting with money. Based on the communication goal in the September 25 IEP, it is found that Student had additional needs in the areas of using appropriate volume when speaking, eliciting information with questions, using descriptors, and developing perspective taking skills.

IEP Team Meeting of October 10, 2006

83. The IEP team met on October 10, 2006, to discuss a behavioral incident Student had on the bus. He was upset because he was unable to get off the bus with the others when it first arrived at school around 7:15 a.m. Student threatened to kill everyone on the bus. The IEP team adopted a behavior plan, which establishes that Student had a behavioral need in the area of using appropriate verbal expressions to express his emotions.

IEP Team Meeting of October 23 2006

84. The IEP team met on October 23, 2006, to discuss the results of District's speech/language assessment conducted as part of Student's triennial review. There is scant evidence about this meeting and the speech/language assessment. Based on this assessment, it is determined that Student has needs in oral communication in the areas of understanding verbal expression, understanding semantic relationships, formulating sentences using prepositional phrases, negatives, and subordinate clauses, articulation, and speaking rate.¹³

IEP Team Meeting of October 27, 2006

85. The IEP team met on October 27, 2006, and determined that Student had a need in the area of noncompliance and adopted a behavior plan to address it. The IEP team also modified Student's transition plan to address dental care and hand washing, which establishes he had needs in those areas. Student did not show that he had needs in any other area.

Annual Goals¹⁴

86. Student did not show that he had unique needs in the areas of phonemic awareness (except as related to his need in the area of decoding), auditory processing, and visual processing. Accordingly, District was not required to have goals in those areas.

IEP Team Meeting of September 25, 2006

87. When Mother returned to West Covina, she met with Ms. Venetianer to develop Student's goals. The IEP team met on September 25, 2006, to discuss the revised goals they developed. Mother consented to implementation of the IEP (September 2006

¹³ Semantic relationships include spatial relationships (as described by prepositions), temporal relationships (the sequence of months of the year and days of the month), and sequential relationships (as described by before and after). Student's specific problem in articulation concerns lingual alveolar accuracy; however, this is not adequately explained in the record.

¹⁴ Student's contentions are described in Factual Finding 22.

IEP).¹⁵ The reading comprehension goal requires Student to formulate predictions about the text, using chapter books at the reading level of late third grade through sixth grade.¹⁶ While there is insufficient evidence that Student was able to read at the sixth grade level in September 2006, the goal included lower grade level texts which he was capable of reading. This goal meets Student's need in the area of reading comprehension.

88. The present level of performance for the reading comprehension goal uses Student's WJ-III score in letter-word identification, a measure of decoding. However, neither the goal nor the record indicates how it addresses decoding. The evidence shows that District did not offer a goal meeting Student's need in the area of decoding.

89. The reading goal in vocabulary development addresses synonyms, antonyms, and homographs in third through sixth grade level chapter books. For the same reasons addressed concerning the reading comprehension goal, the vocabulary goal meets Student's needs. Both the reading comprehension and vocabulary goals require Student to use chapter books, which meets Student's need to have access to quality literature.

90. Another reading goal addresses reading fluency. Student is required to read a passage at the fifth grade reading level or above with appropriate pacing, intonation, and expression at a rate similar to normal conversation. Caroline Bailey, Ph.D., established that this is not an appropriate reading fluency goal for Student. Dr. Bailey holds a doctorate in clinical and developmental psychology. A significant area of her research concerns the outcomes of intervention for children with reading and language deficits. Because of this, her testimony is given great weight in this area. Student's reading fluency, based on the WJ-III score, was at a strong second grade level, indicating he did not have the underlying skills necessary to develop his fluency by reading passages at the fifth grade level or above. From this it follows that he does not have the necessary skills to develop his verbal expression reading passages at that level. This goal does not meet Student's need in the area of reading fluency.

91. The written expression goal requires Student to write an informational report including details drawn from source materials. This goal is based on curriculum content standards for fourth grade. Student's WJ-III score in broad written language was a grade equivalent of 2.7, spelling was 3.1, and writing fluency was 3.6; however, writing samples was 1.5. While Student's low score in writing samples suggests he may not be ready for a goal based on fourth grade content standards, this was not established by the evidence. The goal meets Student's needs in the area of written expression.

92. The present levels of performance for the written expression goal use Student's WJ-III scores in writing fluency and spelling. However, there is nothing in the

¹⁵ Although the September 25, 2006 IEP team meeting resulted in an amendment to Student's May 25, 2006 IEP, for ease of reference, it will be referred to as the September 2006 IEP.

¹⁶ A chapter book is a book that tells a story over a series of chapters, such as a typical novel.

goal or the record indicating that these areas are also being addressed. The evidence establishes that Student's needs in the areas of writing fluency and spelling were not met by the goals District offered.

93. One math goal requires Student to break a problem, involving all four basic operations with whole numbers, fractions, and percents, into simpler parts and calculate the correct solution. Student's present levels of performance, based on the WJ-III scores, show he has a broad math grade equivalent of 3.1, and math calculation, 3.4. The goal, based on a fourth grade curriculum standard, is a suitable goal. This goal meets Student's need in the area of math reasoning.

94. The other math goal requires Student to interpret and compute percentages, and find decimal and percentage equivalents of fractions. This goal relates to a fifth grade curriculum standard. Based on Student's present levels of performance described in Factual Finding 93, this is not a suitable math calculation goal. Calculating with percentages and fractions is conceptually difficult. Student's broad math score of low third grade indicates he does not have the foundational skills to address this challenging area. The evidence establishes that this goal did not meet Student's need in the area of math calculations.

95. As determined in Factual Findings 19 and 82, Student had a need in the area of math fluency. District did not offer him a goal to meet his need in this area.

96. The IEP team determined that Student's behavior did not impede his learning or that of others, and he did not need a behavior plan because he was not exhibiting inappropriate behavior in the classroom. As discussed in Factual Finding 81, Student had needs in the area of behavior concerning inappropriate verbal expressions, work completion, inattention, off task behavior, and noncompliance. District did not offer any goals to address these needs.

97. The IEP team adopted a transition plan for student. The transition plan includes goals in the area of daily living skills concerning telling time and grooming skills. Student did not show that these goals did not meet his needs in these areas.

IEP Team Meeting of October 10, 2006

98. The IEP team met on October 10, 2006, to discuss the behavioral incident Student had on the bus, which is described in Factual Finding 128. District prepared a behavior plan that included a goal concerning inappropriate verbal expressions. The goal provided that when presented with a situation evoking an emotional response, Student would use learned, appropriate verbal expressions to communicate his emotion. The objectives supporting this goal required Student to identify emotions during debriefing of inappropriate situations and to respond with appropriate verbal expressions when prompted. This goal meets Student's need in the area of inappropriate verbal expressions. District did not offer any goals to meet Student's other behavioral needs concerning work completion, noncompliance, inattention, or off task behavior.

IEP Team Meeting of October 27, 2006

99. The IEP team met again on October 27, 2006, to discuss the behavior support plan that was revised at Mother's request. The revised behavior goal is substantially similar to the one District offered at the October 10 meeting. For the reasons stated in Factual Finding 98 about the prior version, District offered a goal that met Student's need in the area of inappropriate verbal expressions.

100. District offered another behavior plan focusing on Student's noncompliance with rules and directives. This goal met Student's needs in the areas of noncompliance. District did not offer any goals to meet Student's other behavioral needs in the areas of work completion, inattention, or off task behavior. District offered a goal in the area of daily living skills concerning dental care and hand washing. The goal met Student's needs in those areas.

101. As determined in Factual Findings 88, 90, 92, 94, and 95, in the September 2006 IEP, District failed to offer goals meeting Student's needs in the areas of decoding, reading fluency, writing fluency, spelling, math calculations, and math fluency. Because so many areas of need were left unmet, the goals that were offered were not reasonably calculated to provide educational benefit to Student. District's failure to offer goals in these areas denied Student a FAPE for the 2006-2007 school year.

102. As determined in Factual Finding 96 District failed to offer, in the September and October 2006 IEPs, goals meeting Student's behavioral needs concerning inappropriate verbal expressions work completion, inattention, off task behavior, and noncompliance. Failing to offer goals to address Students behavioral needs was reasonably likely to prevent Student from making progress and resulted in a denial of FAPE.

*PRR-Based Interventions and Remediation Strategies*¹⁷

103. The September 2006 IEP, to which Mother consented, governed Student's program during the 2006-2007 school year. It does not include any information about the interventions or teaching strategies used in Student's SDC classes. Ms. Venetianer taught Students all subjects in the 2006-2007 school year, except physical education. She taught him English, as well as a skills class, which provided remedial instruction in reading. She used the Language! program for all of the students in the remedial skills class. Ms. Venetianer moved through the program with the students as a group. She started at the beginning of Book B in the Language! program because she believed it was the level that fit her students. She tried to balance the students' individual needs when moving everyone forward at the same pace. She had from nine to 18 students in the class during the year. It is undisputed that Language! is a PRR-based program.

¹⁷ The parties' contentions are described in Factual Finding 29.

104. In Albuquerque before entering the District, Student completed Book B through unit 11 in Language!, which was well into Book B. According to Dr. Bailey, Language! is best administered according to the student's own pace, and matched to the student's level of functioning. In addition, if a student shows weakness in certain areas, specific units can be used to provide additional remediation. Dr. Bailey's testimony is given significant weight because of her knowledge of and research concerning reading interventions. Dr. Bailey's testimony established that District's use of the Language! program did not meet Student's needs.

105. At the IEP team meeting on October 27, 2006, District offered Student an additional independent study reading class in response to Mother's request. Mother consented to implement this program on October 31, 2006. The purpose of the reading program was to increase Student's reading comprehension, fluency, and vocabulary development. The IEP describes a variety of strategies to be used. Mother selected chapter books to be used during this reading program.

106. As determined in Factual Findings 90, District did not offer Student a goal to meet his need in reading fluency. While the independent reading program addressed reading fluency, it did not meet his needs. Ms. Venetianer routinely did not correct Student's reading errors, because she did not want to discourage him. Dr. Bailey persuasively testified that failing to correct errors in Student's oral reading will not only hinder his fluency, but it can impede his comprehension of the passage. Dr. Bailey persuasively established that Student requires a systematic approach to remediate his reading deficits.

107. The evidence shows that during the 2006-2007 school year, District offered Student Language!, a PRR-based program, which was a reading intervention that was capable of meeting Student's needs. However, District required him to work at a level that he had already successfully completed, and did not tailor the program to address his deficits. Given Student's broad range of needs in all core academic areas, Student needed specialized remediation strategies to meet his needs. District's failure to provide appropriate remediation strategies denied Student a FAPE.

Services and Interventions Addressing Oral Communication

108. Student contends that from April 2006 through the 2007-2008 school year, District failed to provide appropriate interventions related to his difficulties with oral communication, specifically volume, pitch, intonation, mumbling or low speech, failure to initiate conversation, and a tendency to use very short phrases. District responds that it met Student's needs in these areas by providing speech and language services, and small group social skills training.

109. The September 2006 IEP provided a goal addressing Student's needs in the areas of using appropriate volume when speaking, eliciting information with questions, using descriptors, and developing perspective taking skills. It also provided speech and language services twice a week for 30 minutes each session. Student did not establish that he had

needs in the areas of pitch, intonation, or mumbling or low speech. Student's communication goal, which addressed eliciting information with questions, using descriptors, and developing perspective taking skills, also encompassed and met any need for assistance with initiating conversation and using longer phrases.

110. Based on Factual Finding 84, as of October 23, 2006, Student had needs in oral communication in the areas of understanding verbal expression, understanding semantic relationships, formulating sentences using prepositional phrases, negatives, and subordinate clauses, articulation, and speaking rate. The October 23, 2006 IEP offered Student goals that addressed these areas as well as articulation, and intelligibility, volume and rate of speech. District's offered goals to meet Student's needs in oral communication in the areas of volume, mumbling or low speech, and using longer phrases. Student did not show that he had needs in the areas of pitch or intonation.

111. District offered to reduce Student's speech and language services from twice a week to once a week. The September 2006 IEP establishes that Student required two sessions a week; there is no evidence in the record showing that Student's needs decreased. District's offer to reduce Student's speech and language services did not meet Student's needs and denied him a FAPE.

112. At the IEP team meeting on October 26, 2006, District offered to provide a social skills class twice a month led by a psychologist intern. This was in response to Mother's request for proactive teaching of appropriate social skills. This social skills class adequately met any need Student might have for assistance initiating a conversation.

AT Assistance

113. Student contends District, from April 2006 through the 2007-2008 school year, failed to meet his needs in the area of AT. As determined in Factual Finding 5, District had reason to believe, as of the September 13, 2006 IEP team meeting, that Student needed AT to assist with the production of written work. District offered no AT devices or services prior to the May 2007 IEP. As a result, Student continued to have difficulty producing written work. Therefore, District failed to meet Student's needs for AT assistance during the 2006-2007 school year.

*Level of Staff Support*¹⁸

114. During fall 2006, the teacher-to-student ratio in Student's classes with Ms. Venetianer were one-to-five in first period skills class; one-to-five-and-one-half in English; one-to-four and-one-half in math; and one-to-three in sixth period skills class.¹⁹ During spring 2007, they were one-to-two in first period skills class; one-to-two-and-one-

¹⁸ The parties' contentions are described in Factual Finding 35.

¹⁹ Ms. Venetianer and instructional aides are included as teachers.

half in English; one-to-four in math; and one-to-nine in sixth period skills class. In addition, as determined in Factual Finding 105, beginning late October 2006, Student had an individualized reading class. During this reading class, which took place during the first period skills class, Student worked one-to-one with an aide or with Ms. Venetianer. Beginning the second semester, Student worked one-to-one with an instructional aide in science because he was working at a higher level than the other students. Student had a one-to-one instructional aide during physical education class, lunch, career day activities, and to and from the bus. The evidence does not show that Student required additional staff support, either in his SDC or during general education activities.

Behavioral Services and Interventions

115. Student contends that District failed to meet his need for behavioral services from April to October 2006 by failing to offer instruction in appropriate communication and strategies for self-regulating in stressful situations, by failing at the September 13, 2006 IEP team meeting to develop a behavior plan prior to October 2006, and from the 2006-2007 school year through the 2007-2008 school year by failing to develop an effective plan for reducing inappropriate behavior.

116. As determined in Factual Finding 81, at the beginning of the 2006-2007 school year, Student had needs in the areas of inappropriate verbal expressions, work completion, inattention, off task behavior, and noncompliance, and District did not offer any goals to meet these needs. Student's conduct in the 2006 ESY, and Ms. Marker's recommendation to continue Student's behavior plan from Albuquerque establish that District was required to offer Student a behavior plan at the September 13, 2006 IEP team meeting to address all of his behavioral needs. For the reasons discussed regarding 2006 ESY in Factual Findings 40 and 41, at the beginning of the school year, District should have provided Student strategies for self-regulating in stressful situations.

117. Student contends that District never developed an effective plan for reducing his inappropriate behavior. As determined in Factual Findings 83 and 85, District offered, and Mother consented to, two behavior plans in October 2006. The plan aimed at verbal expressions describes with specificity the behavior addressed by the plan, and identifies the settings in which it occurs. District staff and Mother together developed this plan, which is clear, detailed, and comprehensive. It provides systematic implementation across environments, modifies aspects of Student's environment, and includes instruction to develop appropriate behavior. The behavior plan was reasonably calculated to produce significant improvement in Student's behavior. District developed an effective plan for reducing Student's use of inappropriate verbal expressions.

118. The behavior plan addressing Student's noncompliant behavior follows a similar format and provides similar information concerning Student's failure to follow rules and comply with adults' directives. Although not as detailed as the other behavior plan, it meets Student's needs. It provides a systematic program that includes instruction to develop appropriate behavior, and was reasonably calculated to produce significant improvement in

Student's behavior. District developed an effective plan for reducing Student's noncompliance with rules and directives.

119. As determined in Factual Finding 96, Student had unmet needs in the areas of work completion, inattention, and off task behavior during the 2006-2007 school year. District failed to offer a plan for reducing these behaviors. District's failure to provide behavioral services and interventions to meet these needs interfered with his educational progress and denied him a FAPE.

Participation in Competitive Wrestling

120. Student contends that from September 2006 through the 2007-2008 school year, District failed to recognize or document how participation in competitive wrestling addresses his social, psychological, and behavioral needs, and meets the legal requirement of maximum interaction with typically developing peers.²⁰ Student clarified in his closing brief that he does not contend that he requires additional support or any modifications or accommodations in order to participate in competitive wrestling. District contends that competitive wrestling is not required for Student to either access the curriculum, or benefit from his program.

121. Student joined the High School wrestling team, which is open to any student who is interested, in September 2006. Each member of the team participates in practice and travels to meets. Team members compete with each other to be eligible to represent High School at competitive meets. The competitive wrestling season lasts from November to early February. A wrestling club is also available at High School. Club wrestling takes place every month outside of the competitive wrestling season, except for August. The wrestling team and club are close-knit groups. The coaches and parents organize social events to which all members are invited.

122. Student quickly became a full, participating member of the wrestling team. He is well-liked by the coaches and others on the team and participates in the social events. He has competed with the team, and won matches, medals, and one tournament. Shirley Stephens, one of the wrestling coaches, believes that Student is capable of earning a junior varsity letter in wrestling if he continues to compete. Participating as a member of the wrestling team has boosted Student's self-esteem, and has given him confidence both athletically and socially. Mother described Student's participation on the competitive team as being "life changing" for him.

123. District's obligation to provide Student a FAPE is not limited to Student's academic program. It extends to extracurricular and nonacademic activities, which expressly include both athletics and recreational activities. There are several circumstances in which Student's participation in competitive wrestling must be reflected in his IEP. Student is not seeking supplementary aids or supports to participate in competitive wrestling, or

²⁰ Student's contentions are based on the statement of issues in the order following prehearing conference.

accommodations or modifications to allow him to participate. If Student's participation in competitive wrestling was required to meet his needs, it could qualify as recreation services, a related service required to be in his IEP. Since this contention is consistent with the issue identified for hearing, this claim will be considered. Finally, if Student's participation in competitive wrestling was required in order to provide a FAPE to him in the LRE, it would be required to be in his IEP.

124. Student contends that participation in competitive wrestling addresses his social, psychological, and behavioral needs. The evidence is undisputed that Student benefited socially and emotionally from participating in competitive wrestling. However, there is insufficient evidence that Student had unique needs that could only be met through competitive wrestling. Based on Factual Finding 81, the evidence does not establish that Student had needs in the area of social/emotional development to improve his self-esteem. While Student had some needs that could broadly be characterized as in the area of social skills, there is no evidence that these needs either could be appropriately met, or were required to be met, by competitive wrestling. Accordingly, the evidence does not establish that Student had any unique need that required him to participate in competitive wrestling.

125. Student next contends that participation in competitive wrestling was necessary for him to receive a FAPE in the LRE. During the 2006-2007 school year, Student participated in general education in physical education, lunch, nutrition, assemblies, rallies, and career day. There is no evidence that Student required his IEP to include competitive wrestling in order to receive a FAPE in the LRE during the 2006-2007 school year.

Transportation Services

126. Student contends that during the 2006-2007 school year, District failed to provide him adequate transportation services because he was required to spend extra time on the bus to avoid being unsupervised on campus. Student claims that this additional time on the bus resulted in a behavioral outburst.

127. The September 2006 IEP provided Student with curb-to-curb transportation. In addition, an adult aide was required to meet him when the bus arrived and escort him to a classroom. The aide was to notify Mother if Student was not on the bus. At the end of the day, an aide escorted him from his class room to the bus.

128. Student lives fairly close to High School. The bus picked him up at home and arrived at High School around 7:15 a.m. He was required to stay on the bus and ride it for another circuit while other students were picked up. He got off the bus when it arrived at school the second time at around 7:30 a.m. Mother was concerned for Student's safety being on the campus before it officially opened at 7:30 a.m. Mother's credible testimony established that she requested that an aide be provided for Student when the bus first arrived at 7:15 a.m., but was told that aides were not available at that early hour. On October 9, 2006, Student became upset when he was unable to get off the bus when it first arrived at

school, and threatened to kill everyone. After this incident occurred, a few prior occurrences of Student making inappropriate comments were disclosed.

129. Requiring Student to stay on the bus for an additional 15 minutes is not an unreasonable length of time, particularly since the total time on the bus was relatively short. As determined in Factual Finding 116, District failed to meet Student's behavioral needs at the beginning of the school year. There is no evidence to determine if Student's behavioral difficulties on the bus resulted from either the length of the bus ride, or District's failure to meet Student's behavioral needs. Because of this, it is determined District provided adequate transportation services to Student.

Placement in an SDC²¹

130. During the 2006-2007 school year, District offered five types of classes at High School, each based on California's curriculum standards: general education, collaborative, RSP pullout, SDC, and core SDC. A collaborative class is taught by both a general education and special education teacher and includes both general and special education students. A student receiving RSP pullout is in general education classes but receives specialized instruction removed from the general education class. SDC classes are a self-contained classroom with students who are working towards a high school diploma. Core SDC, also a self-contained classroom, is generally for students who are not working towards a diploma and need a more functional curriculum.

131. The September 2006 IEP, to which Mother consented, placed Student in core SDC classes for all academic subjects. Ms. Venetianer taught all of them except earth science. The core SDC classes, which include students in grades nine through 12, have a higher level of teaching support than the other classes. As determined in Factual Finding 114, all of Student's classes had low teacher-to-student ratios and he received some one-to-one assistance. Student's skills were at the upper level of the class; only one or two others were working at a higher level.

132. Mother established that most of Student's eighth grade classes in Albuquerque were full inclusion classrooms, which is comparable to District's collaborative classes. According to Mother, Student progressed in that environment. She wanted him to be placed in a similar environment in the District. However, she was concerned that the classes she observed, including general education and collaborative classes, were too large and moved too fast for Student. She liked the low teacher-to-student ratio in Ms. Venetianer's SDC classes, but was unaware that they were generally for students who were not working toward a diploma.

133. Mother believed that the level of the reading material was too low in Ms. Venetianer's class and the subject matter did not interest Student. However, as determined in Factual Findings 87 and 89, for the most part, Student's reading goals were at

²¹ The parties' contentions are described in Factual Finding 37.

a level to meet his needs. The reading goal that did not meet his needs was at too high a level, not too low, as determined in Factual Findings 90. Although Ms. Venetianer did not use the Language! program at the appropriate level for him, as determined in Factual Findings 104, this was not the only curriculum used in the class. District accommodated Mother's request that Student be exposed to chapter books at higher reading levels and provided an individualized reading program for him. While Student did not present much evidence concerning his math class, as determined in Factual Findings 94, the one math goal not meeting Student's needs was at too high a level for Student, not too low. The evidence establishes that the level of instruction in Student's SDC classes met Student's needs.

134. Student never clearly articulated the basis upon which he sought to show that the peer group in the SDC classes was not appropriate. The fact that he was on the high end of academic ability, without more, does not indicate that his peers were not suitable. Ms. Venetianer grouped Student with others at a comparable level of ability and worked with them in a small group setting. Thus, Student's immediate peer group was close to or above his academic level. Student presented evidence challenging District's determination that he had mental retardation. However, the fact that most of the students in the SDCs had mental retardation does not show that they were not suitable peers for Student. Student did not establish that the peer group in Student's SDC classes was not appropriate.

*LRE and Access to General Education*²²

135. Shortly after arriving from New Mexico in June 2006, Mother visited High School. Joseph Jones, the school psychologist at the time, showed her several classes, including an upper level SDC, which had about 20 students. Mother believed, because of the large class size, that Student would need an aide if he were in the class to assist him to focus on the work. Mr. Jones told her that an aide would not be available for Student. At one of the IEP team meetings in September, Mother spoke with the team about having a one-to-one aide so that Student could attend the higher level SDC class. Dr. Smith responded that he could not have a one-to-one aide because District did not have the personnel to do it, and she did not believe it was necessary. Based on the comments from Mr. Jones, Dr. Smith, and other members of the IEP team, Mother reasonably believed that there was no other options for Student other than Ms. Venetianer's SDC.

136. The September 2006 IEP had Student participating in general education for physical education, lunch, nutrition, assemblies, rallies, and career day. The only information in the IEP indicating that the team considered placing Student into a less restrictive setting are preprinted statements indicating that supplemental services were considered or tried within a general education setting; the goals and objectives cannot be met in a general education setting without the support of special education services; and the placement is necessary to meet the goals. There is no evidence that the team discussed these factors, or considered placing Student into any of the less restrictive classroom options available at High School.

²² The parties' contentions are described in Factual Finding 51.

137. The IEP team's failure to consider any less restrictive option taints the decision it made to place Student into the lowest level SDC class. Mother's testimony establishes that Student needs additional educational and behavior support to participate in a less restrictive environment. This should not preclude Student from being placed in a less restrictive environment. There is no evidence showing that Student would not educationally benefit from placement in the higher level SDC class. Nor is their evidence of the effect his presence would have on the teacher and other students, or of the cost. The nonacademic benefits of placement in a less restrictive environment to both Student and his peers are obvious: the opportunity for them to learn from each other, and for Student to develop social relationships with general education peers. Therefore, weighing all of the evidence and considering all of the relevant factors, the evidence shows that District failed to place Student in the LRE for the 2006-2007 school year and denied him a FAPE.

138. The evidence does not show that District denied Student access to the general education curriculum during the 2006-2007 school year. He participated in the general education setting for physical education, lunch, recess, assemblies, rallies, and career day. The SDC program and Student's goals were based on California's curriculum standards, which gave him access to the general education curriculum.

Implementation of Behavior Plan and Behavioral Supports

139. Student contends District failed to implement the IEP and behavior plan from October 2006 to February 2007, by failing to provide targeted instruction in appropriate communication and strategies for self-regulating in stressful situations; from February 2007 through the 2007-2008 school year, by failing to utilize sufficiently skilled staff to deliver this instruction; and during the 2006-2007 and 2007-2008 school years, by failing to implement required behavior supports. District contends it implemented Student's behavior plan after Mother agreed to it, and provided instruction by trained and experienced staff.

140. Ms. Venetianer's testimony established she implemented Student's behavior plan concerning inappropriate verbal expressions and provided instruction regarding self-regulation. She or an aide spoke with him after observing an incident covered by the plan; however, there were few incidents. She spoke with him after the incident on the bus and he wrote a letter of apology to the bus driver. Ms. Venetianer believed that the instruction was successful because there were no other significant incidents. There is no evidence disputing this. As determined in Factual Findings 112, District provided a social skills class twice a month. The psychologist intern worked under the supervision of Cheryl Lawson, who was a school psychologist at the time and has extensive experience. The group addressed appropriate interactions and responses. The evidence shows that from October 2006 to February 2007, District provided instruction to Student, both in the classroom and in the social skills group, concerning appropriate strategies for self-regulating in stressful situations.

141. Ms. Venetianer, the SDC teacher through the 2006-2007 school year, has over 20 years' experience with District teaching special education classes. The instructional aides

that assisted Student met the qualifications for the job. Although there is little evidence concerning the aides' experience, education or training, there is insufficient evidence that the aides were not sufficiently skilled to assist Ms. Venetianer with instructing Student. Similarly, there is no evidence concerning the education, experience or training of the psychologist intern who conducted the social skills group under the supervision of Ms. Lawson. Student has not shown that the intern was not sufficiently skilled to instruct Student on self-regulation. The evidence shows that from February 2007 to the end of the 2006-2007 school year, District provided sufficiently skilled staff to instruct Student concerning communication and strategies for self-regulating in stressful situations.

142. Student contends that District failed to implement behavioral supports during the 2006-2007 school year. As determined in Factual Finding 140, District implemented the behavior plan concerning inappropriate verbal expressions and self-regulation during the 2006-2007 school year. Ms. Venetianer initially implemented the behavior plan concerning noncompliance, which required her to chart noncompliant behavior and work with Student to monitor his own behavior. She stopped having Student monitor his own behavior because he was not able to do it, and the behavior did not occur frequently enough to chart. No IEP team meeting was called to discuss modifying or discontinuing the behavior plan. Student established that during the 2006-2007 school year, District failed to implement behavior supports concerning noncompliant behavior as required by behavior plan. However, Student has not shown that this was a material failure to implement his IEP. He offered no evidence disputing Ms. Venetianer's testimony that the behavior plan was not needed. District's failure to implement Student's behavior plan concerning noncompliant behavior did not result in a denial of FAPE.

Implementation of Individualized Reading Program, Student-to-Teacher Ratios, and Speech and Language Services

143. Student contends District failed to implement his reading program; maintain required student-to-teacher ratios in the classroom; deliver speech-language services; and provide sufficient compensatory speech-language services for sessions not provided. District contends it provided Student's individualized reading program; maintained the required student-to-teacher ratios in all academic classes; and provided more speech-language services than required by Student's IEP.

144. On October 31, 2006, Mother consented to implementation of Student's individualized reading program, which was held four days a week. District began Student's reading program on October 4, and conducted 15 sessions with him before it was required to do so. District missed 23 of the sessions from November 1 through December 20, 2006, and from January 8 through June 13, 2007. This does not take into consideration any school holidays that may have occurred during these periods, because there is no evidence of any in the record. Student established that District failed to provide him eight sessions of his reading program during the 2006-2007 school year. Since reading was a significant area of deficit for Student, missing two weeks' of his individualized reading program is a material failure, resulting in a denial of FAPE.

145. The September 2006 IEP required that Student be in a setting with a student-to-teacher ratio of four-to-one or five-to-one. As described in Factual Findings 114, during fall 2006, the student-to-teacher-ratio ranged from three-to-one in skills class to five-and-one-half-to-one in English. During spring 2007, the ratio ranged from nine-to-one in sixth period skills class to two-to-one in first period skills class. Student established that District failed to maintain the required student-to-teacher ratios in one class during each semester of the 2006-2007 school year. There is no evidence about what impact, if any, the failure to comply with the ratios had on Student's progress. The evidence does not establish that this was a material failure to implement the IEP.

146. The September 2006 IEP provides that Student was to receive speech and language services twice a week, for 30 minutes each session. District did not provide 17 sessions between September 13 and November 29, 2006. From January 10 through June 8, 2007, District provided an additional 21 sessions. During spring 2007, District more than made up for the missed sessions. The evidence does not show that Student is entitled to additional speech and language services.

Parental Involvement in Implementation of IEP

147. Student contends during the 2006-2007 and 2007-2008 school years, District required Mother to spend unreasonable amounts of time and money monitoring compliance with his IEP. Student contends District required Mother to make book orders, find and fund materials, and fund instruction and remediation.²³ District contends that it never required Mother to do any of these things; Mother chose her own level of participation in the development of her son's IEP and educational program. District claims that it provided instruction and instructional materials that met Student's needs. District argues that Mother chose to order her own materials because she did not believe that the District's were adequate. While District cooperated with Mother's desire for additional materials, it did not require her to provide them. Further, District contends it offered appropriate instruction and remediation and never required Mother to fund her own.

148. Mother actively participated in the development of Student's IEP and educational program. She routinely supervised Student's homework and consulted with his teachers and District staff via email concerning his progress, and special needs. Mother spent a considerable amount of time in these efforts. The September 2006 IEP and the October 2006 behavior plans incorporated Mother's suggestions and reflect much of what she desired for her son's program. While District fell short in certain areas, it also appropriately implemented Student's IEPs in other areas. Mother's involvement with Student's IEP and its implementation was not required to ensure District's compliance with the IEP.

149. Mother believed Ms. Venetianer's SDC classes did not have reading materials that were at an appropriate reading level or concerned age-appropriate subject matter for

²³ Student's contentions are based on the statement of issues in the order following prehearing conference.

Student. She identified books that she believed were appropriate for him. District staff located appropriate books in the school's library, and agreed to order books that Mother requested. It is undisputed that there was considerable delay in getting the materials; many of the books did not arrive until February 2007. However, the evidence does not support a finding that the delay in obtaining these materials resulted in an inability to comply with Student's IEP, or to otherwise meet his needs. Student has not established that Mother's efforts to make book orders, find and fund materials, or to fund instruction and remediation constitute a violation of special education law.

*Holding Timely IEP Team Meetings, Informing Mother Regarding Partial Consent, and Predetermining Placement*²⁴

150. There is no evidence that District failed to hold timely IEP team meetings during the 2006-2007 school year. As determined in Factual Findings 56, there is no evidence that District did not inform Mother of her ability to consent to implementation of a part of District's offer.

151. Mother had considerable input into developing the annual goals included in the September 2006 IEP. Mother repeatedly expressed her desire to District staff that Student be placed in a challenging academic environment with adequate support. As determined in Factual Finding 135, Mother believed that Ms. Venetianer's SDC class was the only option to provide the level of support that Student needed. As determined in Factual Finding 136, the IEP team did not consider any less restrictive placements for Student. Mother's active participation in developing certain aspects of the IEP, such as Student's goals, does not make up for her lack of meaningful participation in other aspects, such as the choice of classroom or need for instructional support. The evidence shows that District predetermined Student's classroom placement for the 2006-2007 school year and denied him a FAPE.

Student's Participation in Development of Class Schedule, Registration Process, and New Students Welcome Ceremony

152. Student contends District failed in fall 2006 to allow him to fully participate in the social aspects of high school by refusing to allow him to participate in the development of his class schedule; and failing to provide Mother with timely information regarding the registration process and the school's new student welcome ceremony. District claims that Student participated in the social aspects of high school by participating in the wrestling team, the Best Buddies program, and the general education aspects of his program.

153. There is almost no evidence concerning either of these allegations. The notices for IEP team meetings on September 13, and October 27, 2006, do not identify Student as a member of the team. However, there is no evidence that Mother wanted him to participate and District refused. Both parties offered evidence concerning the registration

²⁴ The parties' contentions are described in Factual Finding 54.

process for the 2007-2008 school year, but this occurred during the spring semester of 2008, not in fall 2006. The evidence does not establish that District failed in fall 2006 to allow him to fully participate in the social aspects of high school by refusing to allow him to participate in the development of his class schedule; and failing to provide Mother with timely information regarding the registration process and the school's "new student" welcome ceremony.

2007 ESY and 2007-2008 School Year

Student's Unique Needs

IEP of May 17, 2007

154. Student's present levels of performance and the goals District proposed in the May 17, 2007 IEP establish that Student had needs in the areas of reading comprehension; vocabulary development; reading fluency; written expression; writing legibly; writing technology; math calculations with fractions, decimals and percents; math reasoning; temporal and sequential relationships involving the calendar, the alphabet, and numbers; and speech intelligibility, volume, projection, and rate.

155. The goals included in the proposed transition plan establish that Student needs to develop self-help skills in the areas of transactions with money, telling time, and keeping a personal calendar. As determined in Factual Findings 85, Student had previously identified self-help needs in the additional areas of grooming, dental care, and hand washing. Ms. Venetianer established that Student no longer had needs in these areas.

156. District offered a behavior plan to address Student's inappropriate verbal expressions. As determined in Factual Finding 81, at the time of the September 2006 IEP, Student had additional needs in the areas of noncompliance, work completion, and off task behavior. Ms. Venetianer did not believe that Student continued to need a behavior plan because she did not observe problematic behavior in the classroom. However, Student had been uncooperative with his speech and language therapist, and had jumped on students on the playground. The evidence establishes that Student has needs in the area of behavior concerning inappropriate verbal expressions and noncompliance.

157. As determined in Factual Finding 82, the evidence establishes that at the time of the September 2006 IEP, Student had needs in the areas of decoding, writing fluency, math fluency, math reasoning, and exposure to literature. Because there is no evidence showing that Student no longer had needs in these previously identified areas, it is found that Student continued to have these needs.

158. As determined in Factual Finding 109, the evidence establishes that at the time of the September 2006 IEP, Student had needs in the area of oral communication concerning eliciting information with questions, using descriptors, and developing perspective taking

skills. Since there is no evidence showing that Student no longer had needs in these areas, it is found that Student continued to have these needs.

IEP of October 18, 2007

159. The IEP team met on October 18, 2007. District's members of the team determined that Student needed to develop his typing skills in order to use AT devices. This establishes that Student had this need.

Needs in the Areas of Phonemic Awareness, Social/Functional/ Emotional Development, Auditory Processing, and Visual Processing

160. Student did not show that he had unique needs in the areas of phonemic awareness (except as related to his need in the area of decoding), auditory processing, and visual processing at any time.

Annual Goals²⁵

161. As determined in Factual Finding 160, Student did not show that he had unique needs in the areas of phonemic awareness (except as related to his need in the area of decoding), auditory processing, and visual processing. Accordingly, District was not required to have goals in those areas.

IEP of May 17, 2007

162. In the May 17, 2007 IEP, District offered six goals: three in reading, two in writing, and one in math. District relied on SteDell testing to determine Student's present levels of performance and develop annual goals. The SteDell system, which is designed to measure Student's progress on the curriculum standards, consists of a series of multiple choice tests. Ms. Venetianer administered the SteDell to Student by testing him on a series of specific curriculum standards. If Student scored 80 percent or higher, which is considered mastery, she tested him on the next grade's standard. She evaluated the results of the SteDell and drafted goals that she believed best met his needs.

163. The goal in reading comprehension requires Student to identify the main idea and supporting statements in fourth through sixth grade level text. This goal is based on a fifth grade curriculum standard. Ms. Venetianer established that Student's SteDell testing showed that he mastered a comparable skill at the fourth grade level. This goal meets Student's needs in the area of reading comprehension.

164. The vocabulary goal, based on the fifth grade curriculum standard, requires Student to apply knowledge of word origins to determine the meaning of unknown words. Ms. Venetianer established that Student's SteDell testing showed he had mastery of a

²⁵ The parties' contentions are described in Factual Finding 22.

comparable skill at the fourth grade level. Ms. Venetianer also established that Student came very close to showing mastery on the SteDell test for the vocabulary goal included in the September 2006 IEP. Ms. Venetianer established that while Student needed to continue to work on the skill in the September 2006 IEP, he did not need another goal addressing the same skill for the next school year.

165. The goal addressing reading fluency requires Student to read a passage at the fifth through seventh grade reading levels with appropriate pacing, intonation, and expression at a rate similar to normal conversation. It is based on the curriculum standards for fifth grade. Ms. Venetianer established that Student's SteDell scores showed mastery at the second grade level for this skill, and zero percent accuracy at the third and fourth grade levels. When she established the reading level for this goal, she reasoned that Student's comprehension and vocabulary skills were at a higher level, and those skills are more important than reading fluency for a student in high school. In contrast to Ms. Venetianer's view, there was persuasive testimony from Dr. Bailey that there is an important connection between reading fluently and developing reading comprehension. In addition, the disparity between Student's SteDell scores and the fact that he did not meet the reading fluency goal in the September 2006 IEP, also establishes that District did not offer a reading fluency goal that met Student's needs.

166. The goal addressing written expression, based on fifth grade curriculum standards, requires Student to write a three-paragraph composition. Student's SteDell scores show he met the requirements of the writing goal in the September 2006 IEP, based on fourth grade standards, which required him to write an informational report from a variety of sources. Since the SteDell system requires Student to answer multiple-choice questions, it provides limited information about Student's ability to generate his own writing. Nevertheless, the evidence establishes that District offered a goal in written expression that met Student's needs.

167. District offered Student a goal in writing technology, based on fifth grade curriculum standards, requiring Student to create simple documents with electronic media using organizational features, such as spell check and editing features. The present level of performance for the goal states that Student has difficulty writing neatly and legibly and must be proficient using electronic media. Ms. Venetianer did not know Student's level of skill with electronic media at the time she drafted this goal. Because of this, the goal does not meet Student's needs in the areas of writing technology or legible writing.

168. District offered Student a math goal, based on fifth grade standards, requiring him to write and evaluate simple algebraic expressions with one variable. Ms. Venetianer established that while Student's SteDell score showed mastery on the math reasoning goal in the September 2006 IEP, he did not meet the goal as written because he was unable to solve problems with fractions and percents. She also established that his SteDell score did not show mastery on the math calculation goal in the September 2006 IEP, which also required calculations with fractions and percents. Ms. Venetianer further established that Student did not have knowledge of basic concepts at the elementary school level that are the foundation

for algebraic concepts. Because of this, Student does not have the foundation necessary for even a simple goal in algebra. While algebra is a graduation requirement, Student has shown neither readiness for it, nor adequate mastery of basic math skills. District did not offer Student goals to meet his needs in the areas of math reasoning and math calculations.

169. District's offered a transition plan that includes self-help goals in the areas of money skills, telling time, and keeping a personal calendar. Based on the scant evidence in the record, District met Student's needs in these areas.

170. District offered Student a goal addressing verbal expressions substantially similar to the one included in Student's October 2006 behavior plan. There is no evidence that this goal did not meet Student's needs concerning verbal expressions. District did not offer Student a goal to meet his need in the area of noncompliance.

171. As determined in Factual Finding 157, Student had needs in the areas of decoding, writing fluency, math fluency, and exposure to literature. District offered no goals to meet Student's needs in these areas. As determined in Factual Finding 167, District did not offer goals meeting Student's needs in the areas of writing technology and legible handwriting. As determined in Factual Finding 168, District did not offer goals meeting Student's academic needs in the areas of math reasoning and math calculations. District did not offer any goals to meet Student's needs in the areas of reading fluency, math fluency, decoding, writing fluency, and exposure to literature. As determined in Factual Findings 170, District did not offer Student a goal to meet his need in the area of noncompliance. District's failure to offer goals in all of Student's areas of need indicates that his program was not reasonably calculated to provide educational progress. District denied Student a FAPE.

PRR-Based Interventions and Remediation Strategies²⁶

2007 ESY

172. In the May 2007 IEP, District offered Student a program for the 2007 ESY consisting of two periods of specialized academic instruction in an SDC at High School. The IEP does not indicate, and no evidence shows, the nature of the program or the interventions to be used. The IEP establishes that District did not offer any PRR-based interventions or specialized remediation strategies for 2007 ESY.

2007-2008 School Year

173. District offered Student five periods of specialized academic instruction in a separate class, which included SDC classes in basic math, world history and biology, and general education classes in body building, and an elective. District's members of the team recommended that the elective be a skills class that would provide remediation in reading.

²⁶ The parties' contentions are described in Factual Finding 29.

The IEP does not indicate, and no credible evidence shows, that District offered any PRR-based interventions. There is no evidence that District failed to allow Student to use the appropriate level of the Language! program during the 2007-2008 school year.

174. Dr. Bailey testified persuasively that Student requires specialized remediation using intensive, structured, multi-sensory interventions targeting his areas of need, including reading, math, and written expression. She recommends PRR-based programs such as Lindamood Bell, Orton Gillingham, and FastForWord. District's failure to offer such strategies during the 2007-2008 school year and 2007 ESY failed to meet Student's needs and denied him a FAPE.

Services and Interventions Addressing Oral Communication²⁷

2007 ESY

175. The May 2007 IEP offers speech and language services for 30 minutes a week during 2007 ESY. There is no evidence showing that his needs decreased from the prior school year, when he received two sessions a week of 30 minutes each. District did not offer services and interventions addressing Student's needs in oral communication for 2007 ESY, and denied Student a FAPE.

2007-2008 School Year

176. In the May 2007 IEP, for the 2007-2008 school year, District offered Student speech and language services twice a week for 30 minutes each session, and group counseling, once a week for 30 to 40 minutes, which was a continuation of the social skills group begun in October 2006. Student did not present evidence that these services did not meet Student's needs in the area of oral communication. Therefore, the offered services meet his needs.

AT Assistance

177. The May 2007 IEP indicates that Student needs AT devices or services. As discussed in Factual Finding 167, the IEP includes a goal to assist Student to use electronic media to create written documents, which was found not to meet Student's needs. The IEP also allows Student to use an electronic media flash drive to carry electronic files between school and home. Ms. Venetianer gave Student a flash drive, but she did not know how to use it, and no one explained to him how to use it. No other AT assistance was provided in the May 2007 IEP. Student established District did not meet his needs for AT assistance during the 2007 ESY and the 2007-2008 school year. District denied Student a FAPE during the 2007-2008 school year.

Behavioral Services and Interventions

²⁷ The parties' contentions are described in Factual Finding 108.

178. Student contends that District failed to meet his need for behavioral services during the 2007-2008 school year by failing to develop an effective plan for reducing inappropriate behavior. As determined in Factual Findings 156, Student had needs in the area of behavior concerning inappropriate verbal expressions and noncompliance. As determined in Factual Finding 156, in May 2007, District offered a behavior plan to address inappropriate verbal expressions. As determined in Factual Finding 170, it was substantially similar to the October 2006 plan and the goal it contained met Student's need in the area of verbal expressions. Student did not show that the May 2007 behavior plan did not effectively meet his needs in this area. As determined in Factual Finding 170, District did not offer any goal to address Student's need in the area of noncompliance. Nor did District offer a behavior plan to address this area of need. During the 2006-2007 school year, Student's noncompliant behavior interfered with his speech and language therapy. District's failure to provide a behavior plan to address Student's noncompliance resulted in a denial of FAPE.

*Implementation of Behavior Plan and Behavioral Supports*²⁸

179. Student did not attend District's 2007 ESY. Therefore, his allegation that District did not use sufficiently skilled staff during 2007 ESY is dismissed as moot. When the parties could not agree about District's offer in the May 2007 IEP, District and Mother agreed in October 2007 to amend the September 2006 IEP. The parties agreed to continue implementation of Student's behavior plans. Under the amended 2006 IEP, Student attended three general education classes with an instructional aide. Ms. Gonzales, who teaches Student's world history class, holds a master's degree in special education, and severely handicapped, learning handicapped, and regular teaching credentials, along with a resource specialist certificate. She taught special education classes for 13 years, 10 of which were for District, and has taught for a total of 20 years with District. The evidence shows that Ms. Gonzales has the necessary skills to provide instruction concerning self-regulation. Since there is no evidence concerning the other regular education teachers, Student has not established that they did not have sufficient skills to provide the instruction required by the behavior plan. Student had two instructional aides during the 2007-2008 school year. Student did not show that they were not sufficiently skilled to deliver appropriate strategies for self-regulation. Therefore, it is determined District used sufficiently skilled staff during the 2007-2008 school year.

180. There is no evidence about whether Ms. Gonzales or the other general education teachers were aware of, or implemented Student's behavior plan. Since Student did not meet his burden of proof, it is determined that District implemented Student's behavior plans as required during the 2007-2008 school years.

*Placement in an SDC*²⁹

²⁸ The parties' contentions are described in Factual Finding 139.

²⁹ The parties' contentions are described in Factual Finding 37.

2007 ESY³⁰

181. District offered Student ESY as described Factual Findings 172 and 175 from June 25 through July 27, 2007. There is no other evidence in the record of District's offer for 2007 ESY. Mother believed that the ESY program and services did not meet Student's needs and perpetuated stagnation and regression, based on her experience with the 2006 ESY. Because there is no evidence of the specific program District offered, Student has not established any of his claims concerning 2007 ESY.

2007-2008 School Year

182. The May 2007 IEP offered Student SDC classes for basic math, English, world history, and biology. District offered the SDC classes based on his present levels of performance, and updated information concerning his skills and deficits, especially in reading and math. In March 2008, Dr. Bailey observed the classes District offered to Student for tenth grade. Although Dr. Bailey was critical of the SDC classes, her observations and opinions do not pertain to whether the level of instruction was too low, or the peer group was not appropriate. As determined in Factual Findings 165 and 168, goals were found to be inadequate because they were at too high a level, not too low. The evidence establishes that the level of instruction in the SDC classes District offered Student for the 2007-2008 school year was not too low. There is little evidence concerning the students who are in the SDC classes District offered Student for tenth grade. Student did not establish that the peer group was not suitable in the SDC classes District offered.

Consideration of Request to Place Student at Stowell for 2007 ESY and 2007-2008 School Year

183. Student contends District failed to consider placing Student at Stowell for the 2007 ESY and 2007-2008 school year after Mother requested it. Student contends District should have placed him in Stowell because he required its services to meet his needs. District contends it considered placing Student at Stowell. District claims that Stowell is not an appropriate placement because its curriculum is not based on California's curriculum standards, and it offers tutoring services designed to supplement high school instruction, not supplant it.

184. At the May 2007 IEP team meeting, Mother requested he be placed at Stowell for 2007 ESY continuing into the 2007-2008 school year. She noted on the IEP form that she did not believe that his needs were met, and that he had not progressed. Dr. Smith denied the request in a letter dated May 24, 2007. Mother again requested placement at Stowell in a letter dated June 12, 2007. In this letter Mother stated she was placing Student at Stowell beginning June 25, because he had shown minimal growth in some areas, and no growth or regression in others. Dr. Smith responded by letter dated June 19 denying the request, and reiterating that District's offered FAPE at the May meeting.

³⁰ The parties' contentions are described in Factual Finding 39.

185. There is little evidence about what, if anything, District staff did prior to denying Mother's requests for Stowell. Ms. Lawson testified that she did not explore Stowell's program as a placement option because she believed District offered Student a FAPE, and he would gain more educational benefit from District's program. Ms. Lawson was aware that Stowell's certification from the California Department of Education (CDE) was in jeopardy, and that it did not use credentialed teachers to provide services. Dr. Smith testified that she knew little about Stowell's program. According to Dr. Smith, she also knew little about Student and was not able to opine about whether Stowell would be appropriate for him. She believed District had programs that were set up to meet the needs of its students.

186. Even if District is confident that it offered Student a FAPE and that Stowell's services were not necessary for a FAPE, it was required to consider Mother's concerns and request. Considering a request requires deliberation and an examination of the situation in light of the information provided. It need not be extensive, but it requires a conscious approach with an open mind. The evidence shows that District did not consider Mother's concerns about Student that gave rise to her request for placement at Stowell. District had an obligation to actively and sincerely consider Mother's request. District's failure to do so denied Mother an opportunity to meaningfully participate in the IEP process. District denied Student a FAPE.

187. Having determined that District failed to consider Stowell for Student, it must be determined whether District should have placed him there. Stowell provides supplemental special education services designed to assist special education students in benefiting from their core academic program. It focuses on developing the underlying processing and executive function skills, such as attention awareness, auditory and visual processing, and reasoning. It also addresses reading, spelling, math, oral and written language, and study skills. Services are developed individually for each student and are provided on a one-to-one basis. Jill Stowell, the founder, acknowledges that while some curriculum standards are addressed in the academic programs she uses, the programs are not created to teach the curriculum. Ms. Stowell holds a master's degree in education, and a special education teaching credential. She taught in public schools for seven years and has experience with regular education, bilingual, gifted, and learning disabled students. She has had a private practice and learning center for 24 years.

188. It is clear from Student's areas of need, present levels of performance, and his annual goals, that he has significant deficits in the core academic areas of reading, written expression, and math. The report of progress on the goals from the September 2006 IEP shows that Student required additional instruction in all areas. The benchmarks involving calculations with fractions, decimals, and percents were not even introduced to Student. While the evidence shows that District did not offer Student all the services and supports that he needed to meet his needs, it does not show that Student required placement at Stowell, or that Stowell could provide him a FAPE. District was not required to offer Student placement at Stowell for either 2007 ESY or the 2007-2008 school year.

*Holding Timely IEP Team Meetings and Predetermining Placement*³¹

189. Documentation of the May 2007 IEP team meeting indicates that Mother expressed concern that her request for an emergency IEP team meeting was not followed, and she did not agree to combine her requested meeting with an early annual team meeting. Because there is no further evidence concerning the date of Mother's requested meeting, Student has not established that District failed to timely convene a meeting after Mother requested one. There is no evidence that District did not timely convene any IEP team meeting.

190. As determined in Factual Finding 173, District's initial offer, as documented in the May 2007 IEP, was five SDC classes and general education physical education. There is little evidence concerning what placement options, if any, the team discussed at this meeting. Mother requested the IEEs at this meeting, as well as placement at Stowell for ESY and the upcoming school year, which indicate that she was not pleased with the direction the IEP team was taking concerning Student's program. As determined in Factual Findings 206 through 210, District offered, and Mother consented to amend the 2006 IEP to place Student into three general education classes with the support of an instructional aide for the 2007-2008 school year. Even if District did this because, according to Ms. Lawson, it was what Mother wanted, it undermines Student's claim that District predetermined his placement for his tenth grade year. There is insufficient evidence that District predetermined Student's placement for the 2007-2008 school year.

General Education Placement in 2007-2008 School Year

191. Student contends District failed during the 2007-2008 school year to present the general education curriculum at a modified level and with sufficient staff support, including one-to-one instruction, to allow him to make educational progress. District contends that the modifications governing Student's placement in the 2007-2008 school year were those included on the IEP from the prior year, because District was unable to convene an IEP team meeting with Mother.

192. An IEP team meeting was held telephonically on September 6, 2007, and District and Mother agreed to modify Student's class schedule, as governed by the September 2006 IEP, to provide three periods of general education classes in body building, woodworking, and world history. In addition, Student was to receive the support of a one-to-one instructional aide for three periods of general education, to and from the bus, and to and from lunch. The September 2007 IEP addendum does not address any modification to the general education curriculum, or the specific nature of the support to be provided by the instructional aide.

193. Dr. Bailey observed Student in his three general education classes. While she was critical of his participation in the woodworking class, she did not indicate that either the

³¹ The parties' contentions are described in Factual Finding 54.

curriculum needed to be modified, or that the one-to-one aide needed to provide additional support. She observed the class watch a video and answer questions about it. While Student was distracted and did not do much work, neither did most of the other students. Dr. Bailey found that Student's participation in the body building class was appropriate. She did not recommend any modifications to the curriculum or additional support. There was insufficient evidence that the curriculum in either the woodworking or body building class required any modification for Student, or that he required additional staff support in either class.

194. Dr. Perlman observed Student's general education world history class. He described the class as "chaotic," providing a positive social environment, but not a good educational environment for Student. Dr. Perlman observed that his aide did a good job at redirecting Student to pay attention to classroom activities. Dr. Bailey also agreed that world history was a chaotic, but sociable environment for Student. She observed Student's aide assist by prompting Student, reading aloud, and giving guidance on the curriculum. Ms. Gonzales, the world history teacher, modified the curriculum to a lower level so that Student and the other special education students in the class would be able to participate.

195. Dr. Bailey opined that Student required a highly trained aide to assist him with staying on task, learning from the instruction, and contributing positively to the class. In Dr. Bailey's opinion, while his aide was competent, she did not have the education or training to provide the support he needed. Dr. Bailey's opinions are given due consideration. However, in this environment, which both Dr. Bailey and Dr. Perlman viewed as less than optimum, Student has done quite well. He received an A grade in world history during the first semester, and was earning a B grade in late April. Ms. Gonzales indicated that Student's grades reflected the work that he produced, including tests, class work, homework, and extra credit work. The evidence established that District sufficiently modified the curriculum in Student's general education world history class, and provided sufficient staff support for him to make educational progress.

Participation in Competitive Wrestling³²

196. When Mother and District were unable to agree on Student's placement for the 2007 ESY and the 2007-2008 school year, she placed Student in a remedial program at Stowell. During the school year, he attended Stowell for four hours in the morning, and then attended classes at High School in the afternoon. Although he was not attending morning classes at High School, District enrolled him in three SDC classes taught by Ms. Venetianer. Since Student was not attending or submitting work for the classes, Ms. Venetianer gave him F grades in each of the classes. In October 2007, District staff informed Mother that Student was no longer eligible to be a member of the competitive wrestling team. He no longer maintained the minimum grade point average in the required number of courses, as required by the CIF, California's governing body for high school athletics.

³² The parties' contentions are described in Factual Finding 120.

197. While Student was no longer eligible to compete as a member of the High School wrestling team, he was able, and continued, to train and travel with the team. He participated in club wrestling, which is not governed by the CIF, and is open to students in the community. Mother described Student as being “very emotional” about not being able to compete with the team. As time went on, Student expressed, for the first time, disinterest in traveling with the team, because he was unable to wrestle with them.

198. There is no evidence that Student had unique needs that could only be met through competitive wrestling. The evidence does not establish that Student had needs in the area of social/emotional development to improve his self-esteem. While Student had some needs that could broadly be characterized as in the area of social skills, there is no evidence that these needs could be met, or were required to be met, by competitive wrestling. Accordingly, the evidence does not establish that Student had any unique needs that required him to participate in competitive wrestling during the 2007-2008 school year.

199. Student next contends that participation in competitive wrestling was necessary for him to receive a FAPE in the LRE. During the 2007-2008 school year, District offered Student participation in the general education environment for 30 percent of the day. He was able to participate in all aspects of the wrestling team except for representing High School in competition. There is no evidence showing Student must be able to compete for the High School in order to be educated in the LRE during the 2007-2008 school year.

Transition Plan

200. Student contends District failed in the 2007-2008 school year, to offer an adequate ITP because it included unrealistic career goals. District contends the ITP identified his career interests based on a career assessment, provided goals in the area of self-help, and was appropriate.

201. The ITP is partially based on an assessment of occupational interest administered by the East San Gabriel Valley Regional Occupational Program (ROP assessment). The ROP assessment was given to all the students in Ms. Venetianer’s class. The ROP assessment summary is a simple one-page “fill in the blanks”-type form. It identifies Student’s favorite (physical education) and least favorite (math) subjects in school; his educational goals (high school); his work preference (people); and his stated career interests (police officer; SWAT team officer; and Federal Bureau of Investigation).

202. Student’s ITP goal in the area of instruction concerns maintaining money skills, such as counting change, and time skills. The goal to assist in the development of employment and other post-school living options requires Student to complete three sample application forms for future part-time jobs. The goal in the area of daily living skills requires him to keep a personal calendar for such things as homework due dates. Neither the ROP assessment, nor the ITP relates Student’s results on the assessment to the goals in the ITP, which the law requires. Neither the ITP nor the IEP identify any transition services for Student. The effort the responsible parties must expend to monitor Student’s ITP goals is the

only transition service gleaned from the ITP. This ‘transition service’ does not constitute coordinated activity to promote movement from school to post-school activities, which the law requires. Student established that District failed to offer an ITP for the 2007-2008 school year that complied with the legal requirements. The ITP is not reasonably calculated to result in meaningful benefit to student. District’s failure to offer an adequate ITP for the 2007-2008 school year denied him a FAPE.

Parental Involvement in Implementation of IEP³³

203. Mother continued to be an active participant in the development of her son’s educational program during the 2007-2008 school year. For the reasons described in Factual Findings 148 and 149, Student has not shown that District committed any violation as a result.

Implementation of Student’s Classes During 2007-2008 School Year

204. Student contends District refused to document the proposed placement on the amendment to the September 2006 IEP unless Mother signed an IEP narrative. District contends that Mother needed to sign an amendment so that it could lawfully provide special education services to Student. District claims that Mother needed to consent to the IEP’s narrative because it contained a necessary description of the services to be provided. In addition, Student contends that District refused to accept Mother’s partial consent to District’s proposed class schedule. Student argues that District enrolled him in three SDC classes in the morning, to which Mother did not consent, and gave him F grades in each of the classes when he did not attend them. District claims the amendment to the September 2006 IEP does not constitute its proposed placement for tenth grade; it merely documents Mother’s requested schedule for Student.

205. As determined in Factual Finding 196, Mother placed Student at Stowell for four hours in the morning. Mother wanted Student to be enrolled in three general education classes in High School during the afternoon: body building, woodworking, and world history. Ms. Lawson, who became Acting Director of Special Education in August 2007, and Mother discussed District’s offer and Mother’s wishes for the upcoming school year. Mother told Ms. Lawson that unless Student was permitted to take the three afternoon general education classes, she would withdraw him from High School. According to Ms. Lawson, District agreed to let Student attend those classes to ensure that he was attending High School. School started September 4 and Student attended the general education classes Mother requested. Ms. Lawson explained to Mother that since they were changing Student’s classes from what was in the September 2006 IEP, they needed to develop an IEP amendment.

206. On September 17, 2007, Mother signed the first page of the IEP addendum, and expressly limited her consent to implementation of only the following: intensive individual

³³ The parties’ contentions are described in Factual Findings 147.

instruction with a one-to-one instructional assistant for three periods in general education classrooms, to and from the bus, and during lunch; discontinuation of social skills training provided by an intern; and a change in speech and language services to consultation services once a week for 10 minutes. The amendment also included three periods of specialized academic instruction in skills, core math, and core social science, but Mother did not consent to these classes. On September 26, 2007, concerned about the amount of time that had passed, Ms. Lawson told Mother that the narrative must be included in the IEP addendum and, since Mother did not consent to it, Student would be returned to the SDC classes on October 1, as required by the former IEP.

207. On October 1, 2007, Mother signed the narrative. It includes background information about the disagreement between the parties, such as Student's unilateral placement at Stowell; identifies the specific general education classes Student would attend; states that the goals, accommodations, ITP, transportation, and behavior plan from the September 2006 IEP continued; indicates that grading would be based on grade level standards; reiterates the change in speech and language services; indicates that a follow up IEP team meeting would be scheduled; and states that the addendum does not resolve other issues between the parties. According to Ms. Lawson, the narrative needed to be included in the addendum to document all the terms and explain the circumstances for the amendment, and to make clear that the addendum was not the result of an IEP team decision. There is no legal requirement that the narrative page be included in order to amend the September 2006 IEP. However, Student has not shown that requiring the amendment resulted in a violation of special education law.

208. In District's view, because Mother rejected its offer at the May 2007 IEP team meeting, it had to implement the September 2006 IEP. The September 2006 IEP provided that Student was in SDC classes except for physical education. District kept Student in three SDC classes in the morning because it believed it was required by the September 2006 IEP. When Student did not show up or do the work for those classes, District assigned him failing grades. Ms. Venetianer believed it was unfair to give him Fs in those classes. Ms. Windemuth told her to give Student an F for not attending each class. Based on her past relationship with Student, Ms. Venetianer believed that it was detrimental to him to receive Fs in those classes. Ms. Windemuth testified that Student's attendance at an unaccredited institution warranted giving him failing grades in the classes he did not attend. She explained that he was expected to be in those classes, he was absent from them, and the failing grades were justified. Ms. Lawson concurred in that view.

209. According to District, the so-called amendment to the September 2006 IEP did not really amend the former IEP, because District claims it never offered to place Student in the three general education classes added by the amendment. The evidence does not support this view. The first page of the addendum indicates that services included in the 2006 IEP are being revised. The box in which services are listed includes three periods of specialized academic instruction, referring to the three morning SDC classes. The portion of the document to which Mother consented lists the one-to-one aide, three general education class

periods, the discontinuation of the social skills group, and the change in speech and language services. The narrative states:

Parent and [D]istrict agree to change 2 periods of SDC Pull-out [sic] to 2 periods of general education which are Woodworking/Cabinetry and World History. District will provide intensive services (1-1 instructional aide support) for 3 periods of general education, to and from bus, [sic] to, from, and during lunch. [Emphasis added.]

This portion of the narrative expressly states that District agreed to change two periods of SDC included in the 2006 IEP to two periods of general education. When these two classes are added to physical education, which is included in the 2006 IEP, District offered Student three general education classes. In addition, District offered Student three SDC classes, which Mother expressly rejected. Contrary to Ms. Lawson's stated intention, the narrative does not indicate that the amendment was an interim or conditional arrangement, merely documented Mother's requested classes, or did not reflect an offer of special education and related services to Student.

210. The evidence shows that for the 2007-2008 school year, District offered to amend the 2006 IEP to place Student into three SDC classes and three general education classes. Mother consented to place Student into the three general education classes. She did not consent to the three SDC classes. At this point, if District determined that the three SDC classes were necessary to provide Student a FAPE, it was required to initiate a due process hearing. By keeping Student enrolled in those classes while knowing that Student was not going to attend them is sufficient evidence that it believed that those classes were required for District to provide a FAPE. Therefore, District had an affirmative obligation to request a due process hearing to determine whether the three SDC classes were required to provide a FAPE. District did not fulfill its obligation. Instead, it enrolled Student in the courses Mother rejected, assigned him failing grades for not attending them, and compelled Student to file his request for hearing to seek resolution. District failed to fulfill its obligation to implement only the portion of the amendment to the 2006 IEP to which Mother consented. District's violation negatively affected Student's emotional well-being and academic transcript. The failing grades resulted in Student being barred from participating in competitive wrestling. District's implementation of course schedule to which Mother did not consent denied Student a FAPE during the 2007-2008 school year.

Prior Written Notice and Clear Offer at IEP Team Meetings of May 17 and September 6, 2007

211. Student contends District failed at the May 17 and September 6, 2007 IEP team meetings to provide prior written notice, and a clear written offer of the District's proposed placement and services. District acknowledges it did not provide prior written notice at the IEP team meetings because it contends Student's placement needs to result from the decisions the team reaches at its meetings. District argues that any violation did not result in a denial of FAPE because Mother meaningfully participated in the meetings.

District contends it provided a clear written offer of its proposed placement and services for the 2007-2008 school year at the meetings and in two letters.

Prior Written Notice

212. District admits that it did not provide prior written notice at either the May 17 or September 6, 2007 IEP team meetings. However, it must be determined whether it was required to provide the notice at the meetings.

213. District is required to give Mother notice before proposing to change Student's placement, or the provision of FAPE to him, which suggests that the notice must be given before an IEP team meets. Much of the information required by the notice would be known to District prior to a meeting, such as the action proposed, and an explanation for why the action is being proposed. However, the notice is also required to contain a description of options considered by the IEP team and the reasons the options were rejected. Obviously, this information can only be known after the IEP team meets and discusses the proposed action and options. The comments to the federal regulations suggest that a school district will convene an IEP team meeting after it formulate its proposal, and then given notice to the parent prior to its implementation. Therefore, there is no legal requirement that District provide prior written notice at the May or September 2007 meetings, unless shown by the circumstances. Student has failed to establish that District was required to provide prior written notice at either of these meetings.

Clear Written Offer of Placement and Services

214. District contends it presented a clear written offer for the 2007-2008 school year at the May 2007 IEP team meeting, and in its May 24 and June 19 letters to Mother. The May 2007 IEP offered Student five periods each day of specialized academic instruction, in a separate classroom in High School; speech and language services twice each week, for 30 minutes each session, provided in a group in a separate class; and counseling services weekly, for 30 to 40 minutes, provided in a group in a separate class; and transportation curb-to-curb. The accommodations and modifications page offered an instructional assistant during physical education on an as needed basis, and other minor accommodations that are not pertinent. As determined in Factual Findings 173, the meeting notes identify the specific SDC classes being offered and suggest skills class as an elective. In addition, the graduation plan indicates that Student is participating in the high school curriculum leading to a diploma. In addition, ESY was offered as determined in Factual Findings 172 and 175. Dr. Smith's letters to Mother, dated May 24 and June 19, 2007, reiterated the offer concerning classes, speech and language and counseling services, and transportation, as set forth in the IEP.

215. While the offer described in these documents is clear, testimony from District staff raise questions about whether they had a clear understanding of what was offered, and, by extension, whether a clear and coherent offer was made to Mother. At the May meeting, District did not know what the final constellation of classes would be as result of uncertainty

with the budget. According to Ms. Windemuth, District's proposed offer included three SDC classes taught by Ms. Venetianer in skills, math, and social science, along with general education body building, woodworking, and independent study. However, she was not sure this was the placement District proposed. Further, there is no evidence that District communicated this class configuration as District's offer to Mother. Ms. Lawson described the independent study class as an elective skills class that would provide Student remediation in reading. However, she did not know whether Mother was informed that this was what the independent study class would be. According to Ms. Lawson, the SDC classes offered to Student were higher level SDC classes, but she did not know if this was communicated to Mother. Testimony from District staff establishes that District's offer of placement prior to the start of the 2007-2008 school year was neither clear, nor coherent.

216. As with the May IEP, testimony of staff raises doubts about the clarity and specificity of the offer included in the amendment to the September 2006 IEP, as described in Factual Findings 206 through 209. For example, the testimony of District staff shows that District remains uncertain about the nature of the skills class it offered Student. The evidence is unclear whether District offered the same type of class described as the independent study class, in which remedial techniques, such as a Lindamood Bell program, were used, or whether it would be similar to Student's ninth grade skills class, or something else. This testimony established that District's offer pertaining to Student's specialized instruction was not clear or coherent.

217. Neither the May 2007 IEP, nor the amendment to the 2006 IEP was a clear and coherent offer. The evidence shows that even at the time of the hearing in this matter, District staff were unsure about what District offered Student for the 2007-2008 school year. Since District staff were uncertain about the offer, it was not possible for Mother to have a clear understanding of what was offered in May or September. This denied her an opportunity to meaningfully participate in the decision-making process. District denied Student a FAPE.

Determination of Relief

218. District committed a substantial number of violations, both substantive and procedural, in a variety of areas which denied Student a FAPE for over two years, from April 2006 through the 2007-2008 school year. District failed to provide Student an adequate assessment, develop goals to meet Student's needs, provide appropriate or adequate special education and related services, place him in the LRE, provide an adequate ITP, properly implement the program to which Mother consented, adequately discuss the classroom placement, include required information in an IEP, include all members of an IEP team, and provide a clear and coherent written offer. These violations resulted in the loss of educational opportunity to Student and denied Mother a meaningful opportunity to participate in the decision-making process concerning her son's education. The nature and extent of these violations call for comprehensive relief.

Reimbursement for Stowell

219. Stowell's program for Student includes interventions aimed at developing his processing skills and those aimed at academic skills. Stowell utilizes an auditory stimulation and training program that uses sound stimulation to re-educate auditory pathways to increase learning, attention, communication, listening, and sensory integration. It uses two specialized programs, Samonas Sound Therapy (Samonas) and Learning Ears. Samonas uses audio recordings to stimulate the brain for active listening, which results in improved communication, learning, and physical coordination. Learning Ears uses sound and music stimulation to integrate improved auditory function with the development of learning, reading, and spelling skills. In addition, Stowell uses the Processing and Cognitive Enhancement Program (PACE) to develop cognitive processing and executive function skills in a variety of areas. Neither Samonas nor PACE are PRR-based interventions.

220. For Student's academic skills, Stowell uses the Discover Reading program, which brings together interventions comparable to those in separate components of the Lindamood Bell program aimed at vocabulary, reading fluency, reading comprehension, and decoding. Student is using the Writing Adventures program to develop oral and written language, and the Discover Math program to develop math concepts, calculations, and processes.

221. Dr. Perlman observed Student for two hours at Stowell. Student worked hard during the entire time, with few breaks. He remained focused even during tasks that were difficult for him. Dr. Perlman described Stowell as the best learning center he had ever observed. He is familiar with both the Samonas and PACE programs and has seen positive results with each. Although Dr. Perlman was impressed with Stowell, he is concerned that Student is not earning high school credits. Instead of placement at Stowell, he recommended an NPS that could provide intensive remediation as well as access to the standards-based curriculum.

222. Dr. Bailey also observed Student at Stowell and her observations are similar to Dr. Perlman's. She observed him working on the Discover Math program. Student received structured, sequential instruction. He was given verbal prompts to assist him. Student responded well to the use of manipulatives and visual methods of instruction. Dr. Bailey expressed some reservations about the Samonas program because it is not a PRR-based intervention. Instead, she recommends FastForWord, another auditorally-based language remediation program that is, in her opinion, well-researched. Dr. Bailey opines that Student would benefit from an intensive, structured, multi-sensory intervention to provide extensive remediation in reading comprehension, reading fluency, and word identification. She recommends programs such as Lindamood Bell or Orton Gillingham as appropriate and well-researched. She also recommended intensive remediation in math and written expression. According to Dr. Bailey, Student was benefiting from both Discover Math and Writing Adventures. Dr. Bailey recommended that Student be dually enrolled at High School and an appropriate NPS that provides intensive academic remediation to students with learning disabilities and speech and language difficulties. All academic interventions should be

research-based, structured, and multisensory, and individualized for Student's needs. Academic courses should be standards-based and meet the criteria for a high school diploma.

223. Both Dr. Perlman and Dr. Bailey opined that Student was making progress at Stowell, although they acknowledged that he continues to have significant deficits. Stowell's progress report from March 2008 provided anecdotal examples of Student's progress.

224. Betty Benitez, has been a school psychologist at High School for two years. She holds a master's degree in counseling and school psychology and a pupil personnel credential in school psychology. She testified that District staff can provide Student with Lindamood Bell and FastForWord interventions. She opined that Student made progress in reading fluency and reading comprehension, as shown by comparing his WJ-III scores from May 2006 with Stowell's pretest evaluation done in June 2006. While acknowledging that Student did not make the amount of progress she would like to see, she believed he did make progress in the District's program. In her view, minimal progress can be meaningful, and any amount of progress is meaningful progress for special education students. She opined that any student can benefit from intensive remediation and one-to-one teaching, as provided at Stowell. Ms. Benitez's testimony, while sincere, is not given much weight. Her opinion concerning the progress to be expected of students with special needs is troubling. While it is true that Student's progress must be evaluated in light of his disability, the law requires that more than minimal progress be provided to him. While it may be true that any student could benefit from intensive instruction, the question to be decided is whether the law requires District to provide that level of instruction to Student.

225. Mother persuasively testified that she researched available programs before deciding to place Student at Stowell. In addition to Stowell, Mother made arrangements to have Student receive instruction from Hillside School (Hillside), beginning June 2007. However, Hillside, abruptly and without explanation, informed her that it was not accepting Student. None of the NPAs recommended by either Dr. Perlman or Dr. Bailey is geographically convenient for Student. Mother provided the required notice to District prior to placing Student in Stowell. In addition to Stowell, Student received tutoring services from Sally Morrison during the summer of 2007. Ms. Morrison utilized Lindamood Bell techniques with Student in the areas of reading comprehension, decoding, spelling and writing.

226. Weighing the evidence and considering equitable factors, District shall reimburse Student for services provided by Stowell from June 2007 through the date of this decision. Between June 2007 and March 2008, he received 555 hours of services, at \$73 per hour, for a total of \$40,515. This shall include the cost of services, plus any license fees or material fees that were required to be paid to receive the services. District shall also reimburse Student for the cost of transportation. The cost of transportation from September 17, 2007, through April 4, 2008, is \$2,682.50.

Other Relief

227. Student's request for prospective placement to allow him to finish the curriculum at Stowell cannot be granted. Stowell is no longer certified by CDE and OAH has no authority to order Student to receive services from an NPA that is not certified by CDE.

228. Student offered no evidence concerning the type or amount of compensatory educational services necessary to provide the educational benefit to which he is entitled. Student has requested 600 hours of compensatory education to be used by his 25th birthday. There is no basis in the record supporting this amount. Student received intensive, individualized services from Stowell for the past year. Reimbursement for those services is reasonably calculated to provide Student the educational benefit he lost as a result of District's denial of FAPE.

229. Student is entitled to a comprehensive assessment concerning his need for AT devices or services. The assessment shall be performed by an independent assessor chosen by Student. The cost of the assessment shall not exceed \$2,000.

230. District has not met Student's behavioral needs. Student requests that his behavior plan be updated to address specifically identified behavior. However, District has not performed a systematic assessment of Student's behavior. Accordingly, District shall perform a functional analysis assessment (FAA) of Student's behavior meeting the requirements of California Code of Regulations, title 5, section 3052, subdivision (b) and a FAA report meeting the requirements of subdivision (b)(2) shall be prepared and presented to Student's IEP team for consideration.

231. District shall provide Student the option of being awarded elective course credits for his time at Stowell equal to the number of credits that would be awarded for an elective course with the same number of instructional hours as he spent at Stowell.

232. District assigned failing grades to Student during the 2007-2008 school year for courses he did not attend because Mother did not consent to them as part of his educational program. District violated his special education rights by doing so. The only suitable remedy is for District to rescind the grades and remove them from Student's transcript.

233. There is insufficient evidence to order prospective placement and Stowell alone is not an appropriate placement. The findings in this decision and the results of the assessments that are to be provided will provide the IEP team relevant information to develop a program to meet Student's needs and provide a FAPE.

234. Student requested reimbursement for tutoring services provided during June through August, 2007. There is insufficient evidence concerning the services to support their reimbursement. Similarly, there is insufficient evidence in the record to determine that the

other relief Student requested is necessary to provide the educational benefits that likely would have accrued from special education services the school district should have supplied.

LEGAL CONCLUSIONS

1. As the party seeking relief, Student has the burden of proving that District did not offer or provide him a FAPE. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62 [126 S.Ct. 528].)

2. A child with a disability has the right to a FAPE under the Individuals with Disabilities in Education Improvement Act (IDEA) and California law. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 56000.) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined in pertinent part as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability that are needed to assist the child to benefit from instruction. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing J.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

3. A school district must provide "a basic floor of opportunity . . . [consisting] of access to specialized instruction and related services which are individually designed to provide educational benefit to the [child with a disability]." (*Bd. of Educ. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034].) Student argues that with the reauthorization of the IDEA, a school district's obligation to provide a FAPE has shifted from focusing on access and opportunity to focusing on outcomes and results. Student's argument need not be decided here because, regardless of the standard applied, District has denied Student a FAPE.

4. The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Bd. of Educ. v. Rowley, supra*, 458 U.S. at p. 197; *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) As long as the school district's program was designed to meet the student's unique educational needs, was reasonably calculated to provide educational benefits, and comported with the IEP, the district provided a FAPE. (*Ibid.*) A school district must offer a program that is reasonably calculated to provide more than a trivial or minimal level of progress. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 890, citing *Hall v. Vance County Bd. of Educ.* (4th Cir. 1985) 774 F.2d 629, 636.) A child's progress must be evaluated in light of the child's disabilities. (*Bd. of Educ. v. Rowley, supra*, 458 U.S. at p. 202; *Mrs. B. v. Milford Bd. of Educ.* (2d Cir. 1996) 103 F.3d 1114, 1121.) An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) The IEP's goals and methods are evaluated as

of the time they were developed to determine whether they were reasonably calculated to confer an educational benefit to the student. (*Ibid.*)

5. A school district must re-evaluate a child with a disability at least once every three years unless the parents and district agree otherwise, or if a parent or teacher requests one.³⁴ (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303; Ed. Code, § 56381, subd. (a)(2).) A school district is required to assess a child in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) A school district is required to use assessments that provide relevant information that directly assist persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(7).)

Did District fail to promptly or adequately assess Student in the area AT?

6. There is no express requirement that a school district perform an AT evaluation. AT devices or services may be required as part of the child's special education services, related services, or supplementary aid and services. (34 C.F.R. § 300.105.) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. (34 C.F.R. § 300.304(c)(6).) Therefore, in the proper circumstance, a school district may be required to perform an evaluation of a child's need for AT devices or services.

7. As determined in Factual Finding 4, the IEP team had information at the September 13, 2006 meeting that Student experienced hand tremors that impacted his fine motor skills and his work production may have been hindered by his labored handwriting. This provided sufficient information to the team to have determined that Student required an AT assessment at that time. As determined in Factual Finding 5, Mother requested an AT assessment at the May 2007 IEP team meeting and it was performed in October 2007. As a result of District's failure to timely assess Student, his need for AT was not met, resulting in a denial of educational benefit.

8. As determined in Factual Findings 9, the AT assessment District performed did not include any substantial information about Student's needs for AT, or the range of AT devices or services that could meet those needs. The assessment merely described devices District had available, without any analysis or recommendations concerning how to meet Student's needs. The assessment did not provide adequate information to assist the IEP team in determining Student's AT needs and how to meet them.

Did District fail to propose an assessment plan to better identify Student's deficits at the September 13, 2006 IEP team meeting?

³⁴ An evaluation or re-evaluation under the IDEA is the same as an assessment or re-assessment under California law. (Ed. Code, § 56302.5)

9. As determined in Factual Finding 15, the evidence does not show that District was required to offer any additional assessments at the September 13, 2006 IEP team meeting.

Is District required to reimburse Student for an IEE to determine his educational placement ?

10. A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by a school district. (34 C.F.R. § 300.502 (b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must “without unnecessary delay” either file a request for a hearing to show that its evaluation is appropriate, or provide an IEE at public expense. (34 C.F.R. § 300.502(b)(2).)

11. As determined in Factual Findings 17, Mother requested several IEEs at public expense at the May 2007 IEP team meeting. Mother expressed her disagreement about District’s offered program for the 2007-2008 school year; however, she did not express any disagreement about any of District’s assessments prior to filing the complaint that is subject of this hearing. District is not required to provide an IEE at public expense.

Did District deny Student a FAPE beginning April 2006 through the 2007-2008 school year?

Failing to offer goals to meet all of his needs?

12. An IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the student’s needs, resulting from the student’s disability, to enable the student to be involved in and make progress in the general curriculum, and to meet each of the student’s other education needs resulting from his or her disability.

13. An IEP team must consider whether a child’s behavior impedes his or her learning or that of others. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a) (2)(i); Ed. Code, § 56341.1, subd. (b)(1).) If an IEP team determines that it does, the team must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior. (Ed. Code, § 56341.1, subd.(b)(1).) There are many behaviors that will impede a child’s learning or that of others that do not meet the requirements for a serious behavior problem requiring a behavior intervention plan. (See Cal. Code Regs., tit. 5, §§ 3001, subd. (f), 3052.) These less serious behaviors require the IEP team to consider and, if necessary, develop positive behavioral interventions, strategies and supports. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) In California, a behavior intervention is “the systematic implementation of procedures that result in lasting positive changes in the individual’s behavior.” (Cal. Code Regs., tit., 5, § 3001, subd. (d).) It includes the design, evaluation, implementation, and modification of the student’s individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student’s behavior through skill acquisition and the reduction of problematic behavior. (*Ibid.*) Behavioral interventions

should be designed to provide the student with access to a variety of settings and to ensure the student's right to placement in the least restrictive educational environment. (*Ibid.*) 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; *Escambia County Bd. of Educ. V. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1265.)

14. As determined in Factual Finding 29, District failed to offer goals meeting Student's needs in the areas of decoding, reading fluency, writing fluency, spelling, math calculations, and math fluency. Because so many areas of need were left unmet, Student's program was not calculated to provide educational benefit to Student. Accordingly, District's failure to offer goals in these areas denied Student a FAPE from April 2006 through 2006 ESY.

15. As determined in Factual Finding 101, in the September and October 2006 IEPs, District failed to offer goals meeting Student's needs in the areas of decoding, reading fluency, writing fluency, spelling, math calculations, and math fluency. As determined in Factual Finding 102, District failed to offer, in the September and October 2006 IEPs, goals meeting Student's behavioral needs concerning inappropriate verbal expressions work completion, inattention, off task behavior, and noncompliance. District's failure to offer goals in so many areas resulted in a program that was not calculated to provide educational benefit, and denied Student a FAPE for the 2006-2007 school year.

16. As determined in Factual Findings 171, District offered no goals to meet Student's needs in the areas of decoding, writing fluency, math fluency, and exposure to literature. As determined in Factual Finding 167, District did not offer goals meeting Student's needs in the areas of writing technology and legible handwriting. As determined in Factual Finding 168, District did not offer goals meeting Student's academic needs in the areas of math reasoning and math calculations. District did not offer any goals to meet Student's needs in the areas of reading fluency, math fluency, decoding, writing fluency, and exposure to literature. As determined in Factual Findings 170, District did not offer Student a goal to meet his need in the area of noncompliance. District's failure to offer goals in all of Student's areas of need indicates that that his program was not calculated to provide educational progress. District denied Student a FAPE in 2007 ESY and the 2007-2008 school year.

17. As determined in Factual Findings 160, the evidence does not show that Student had unique needs in the areas of phonemic awareness (except as related to his need in the area of decoding), auditory processing, and visual processing. Accordingly, District was not required to offer goals in those areas. As determined in Factual Findings 28, the evidence does not establish that Student required goals in science, health, social science, and the arts.

*Failing to offer interventions based on peer-reviewed research (PRR)?
Failing to allow him to use the applicable portion of the Language! program?
Failing to offer specialized remediation strategies?*

18. An IEP must include in pertinent part a statement of the special education and related services and supplementary aids and services, based on PRR to the extent practicable, to be provided; a statement of the program modifications or supports that will be provided to advance student appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and activities, and to be educated and participate with other disabled and nondisabled children; and the date the services begin and their anticipated frequency, location, and duration. (20 U.S.C. §§ 1414(d)(1)(A)(i)(I), (II); (IV), (VII); 34 C.F.R. §§ 300.320(a); Ed. Code, § 56345, subd. (a).)

19. As determined in Factual Findings 107, District used Language!, a PRR-based reading intervention program, which was capable of meeting Student's needs during the 2006-2007 school year. However, District did not use the program to address Student's specific needs. As determined in Factual Findings 105 through 107, District implemented, at Mother's request, a reading program for Student, but it did not effectively address his need for remediation. Because of Student's broad range of needs in all core academic areas, he needed specialized remediation strategies to meet his needs. District's failure to provide appropriate remediation strategies denied Student a FAPE during the 2006-2007 school year.

20. As determined in Factual Findings 174, Student required specialized remediation strategies to meet his needs during the 2007-2008 school year. Student requires specialized remediation using intensive, structured, multi-sensory interventions targeting his areas of need, including reading, math, and written expression. District's failure to offer these services during 2007 ESY and the 2007-2008 school year and failed to meet Student's needs and denied him a FAPE.

Failing to provide appropriate interventions related to his difficulties with oral communication?

21. As determined in Factual Findings 111, in October 2006, District offered to reduce Student's speech and language services from twice a week to once a week. The September 2006 IEP establishes that Student required two sessions a week; there is no evidence in the record showing that Student's needs decreased. District's offer to reduce Student's speech and language services did not meet Student's needs and denied Student a FAPE.

22. The May 2007 IEP offers speech and language services for 30 minutes a week during 2007 ESY. There is no evidence showing that his needs decreased from the prior school year, when he received two sessions a week of 30 minutes each. District did not offer

services and interventions addressing Student's needs in oral communication for 2007 ESY, and denied Student a FAPE.

Failing to meet his needs in the area of AT?

23. A school district is required to provide any AT device that is required to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.105; Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires AT devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324 (a)(2)(v); Ed. Code, § 56341.1, subd. (b)(5).) An AT device is any item that is used to increase, maintain or improve the functional capabilities of a child with a disability. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

24. As determined in Factual Finding 113, at the beginning of the 2006-2007 school year, District had reason to believe Student needed AT services, but it failed to assess him until October 2007. District offered no AT services prior to the May 2007 IEP. As a result, Student continued to have difficulty producing written work. Therefore, District failed to meet Student's needs for AT assistance during the 2006-2007 school year.

25. As determined in Factual Finding 177, the May 2007 IEP indicates that Student needs AT devices or services. As discussed in Factual Finding 167, the goal in the May 2007 IEP to assist Student to use electronic media to create written documents did not meet his needs. The only AT device offered to Student, the use of a flash drive, was not adequate to meet Student's needs. District's assessment, although inadequate, identified Student's need to develop keyboarding skills. District never offered services to meet this need. District failed to meet Student's needs for AT assistance during 2007 ESY and the 2007-2008 school year, which denied him a FAPE.

Placing him in a special day class (SDC) that was inappropriate?

26. As determined in Factual Findings 44, 47, and 181, the evidence does not show that Student's placement in an SDC for April 2006 through the 2007-2008 school year was inappropriate due to the low level of instruction or inappropriate peer group.

Failing to timely convene the IEP team meetings?

Failing to inform Mother of her option to agree to only a portion of the IEP offer?

27. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist.*, *supra*, 267 F.3d at p. 892.) To constitute a denial of a FAPE, procedural violations must result in one of the following: the loss of educational opportunity; a serious infringement of the parents' opportunity to participate in the IEP process; or a deprivation of educational benefits. (*Ibid.*) A substantially similar standard was codified in the IDEIA. (20 U.S.C. § 1415(f)(3)(E)(ii).)

28. An IEP team meeting must be held within 60 days, excluding certain vacation periods, of receipt of the parent's written consent for an assessment (Ed. Code, §§ 56043, subd. (c), 56344, subd. (a); within 30 days, excluding certain vacation periods, of a parent's or guardians' request for a meeting (Ed. Code, §§ 56043, subd. (l), 56343.5); and within 30 days of a student's transfer into a district from a district not operating under the same SELPA. (Ed. Code, §§ 56043, subd. (m)(1), 56325, subd. (a)(1).)

29. If a parent refuses all services in an IEP after having consented to those services in the past, the school district shall file a request for a due process hearing. (Ed. Code, § 56346, subd. (d).) If a parent consents in writing to special education and related services but does not consent to all of the components of the IEP, the school district shall implement those components to which the parent consented so the child's instruction and services are not delayed. (Ed. Code, § 56346, subd. (e).) If the school district determines that the component of the IEP to which the parent does not consent is necessary to provide a FAPE to the child, a due process hearing shall be initiated. (Ed. Code, § 56346, subd. (f).)

30. As determined in Factual Findings 55, 150, and 189, the evidence does not show that from April 2006 to the 2007-2008 school year, District failed to timely convene any IEP team meetings or failed to inform Mother of her option to agree to only a portion of the IEP offer.

Predetermining his placement?

31. A school district cannot independently develop an IEP, without meaningful parental participation, and then present the IEP to the parent for ratification. (*Ms. S v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131; *W.G. v. Board of Trustees of Target Range School Dist., No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) An IEP team meeting should include "a full discussion of the child's needs and the services to be provided to meet those needs." (71 Fed. Reg. 46678 (Aug. 14, 2006).) The IEP process provides that the parents and school personnel are equal partners in decision-making; the IEP team must consider the parents' concerns and information they provide regarding their child. (Appen. A to 34 C.F.R. Part 300, Notice of Interpretation, 64 Fed. Reg. 12473 (Mar. 12, 1999).) The IDEA's requirement that parents participate in the IEP process ensures that the best interests of the child will be protected, and acknowledges that parents have a unique perspective on their child's needs, since they generally observe their child in a variety of situations. (*Amanda J. v. Clark County Sch. Dist., supra*, 267 F.3d at p. 891.)

32. Procedural violations that interfere with parental participation in the development of the IEP "undermine the very essence of the IDEA." (*Amanda J. v. Clark County Sch. Dist., supra*, 267 F.3d at p. 892.) An IEP cannot address the child's unique needs if the people most familiar with the child's needs are not involved or fully informed. (*Ibid.*) A school district cannot independently develop an IEP without input or participation from the parents and other required members of the IEP team. (*W.G. v. Board of Trustees of Target Range School Dist., No. 23, supra*, 960 F.2d at p. 1484.) A school district cannot refuse to provide services requested by the parents without considering the child's unique

needs or potential effectiveness of the program. (*Deal v. Hamilton County Bd. of Education* (6th Cir. 2004) 392 F.3d 840, 857.)

33. As determined in Factual Findings 135 through 137 and 151 the IEP team did not consider any less restrictive placements for Student when it placed him into the lowest level SDC class for the 2006-2007 school year. Mother relied upon statements by District staff and reasonably believed that the offered class was the only option District had to provide the level of support that Student needed. Mother's active participation in developing certain aspects of the IEP, such as Student's goals, does not make up for her lack of meaningful participation in other aspects, such as the choice of classroom or need for instructional support. The IEP team's failure to actively discuss and consider classroom options denied Mother an opportunity to meaningfully participate in the IEP decision-making process. The evidence shows that District predetermined Student's classroom placement for the 2006-2007 school year and denied him a FAPE.

Did District deny Student a FAPE beginning April 2006 to the end of the 2006-2007 school by the following:

Failing to provide him an adequate level of staff support?

Failing to provide him one-to-one support in general education classes?

34. As determined in Factual Findings 35 and 114, the evidence does not show that Student required additional staff support or one-to-one support in general education classes during 2006 ESY or the 2006-2007 school year.

Failing to place him in the least restrictive environment (LRE)?

Failing to provide him with access to the general education curriculum?

35. A child with a disability must be educated with children who are not disabled to the maximum extent appropriate. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56342.) A child with a disability should be removed from the regular educational environment only when 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. (*Ibid.*) A child with a disability shall not be removed from an age-appropriate regular classroom solely because the general curriculum requires modification. (34 C.F.R. § 300.116(e).) In determining the program placement of the student, a school district shall ensure that the placement decisions and the placement are made in accordance with federal requirements regarding placing the child in the LRE. (Ed. Code, § 56342, sub(b).)

36. When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced: the educational benefits of full-time placement in a regular classroom; the non-academic benefits of full-time placement in a regular classroom; the effect the presence of the child with a disability has on the teacher and children in a regular classroom; and the cost of placing the child with a

disability full-time in a regular classroom. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

37. As determined in Factual Findings 135 through 137, there is no evidence that the September 2006 IEP team considered placing Student into any of the less restrictive classrooms available at High School. There is no evidence showing that Student would not educationally benefit from placement in the higher level SDC class. Nor is their evidence of the effect his presence would have on the teacher and other students, or of the cost. The nonacademic benefits of placement in a less restrictive environment are favorable both to Student and his peers. Therefore, weighing all of the evidence and considering all of the relevant factors, the evidence shows that District failed to place Student in the LRE for the 2006-2007 school year and denied him a FAPE. As determined in Factual Finding 138, the evidence does not show that District denied Student access to the general education curriculum during the 2006-2007 school year.

From April to October 2006, failing to offer instruction in appropriate communication and strategies for self-regulation?

38. As determined in Factual Finding 116, at the beginning of the 2006-2007 school year, Student had needs in the areas of inappropriate verbal expressions, work completion, inattention, off task behavior, and noncompliance, and District did not offer any goals to meet these needs. Based on Factual Findings 21, District's failure to meet his behavioral needs likely contributed to Student's disruptive behavior. District's failure to offer instruction in appropriate communication and strategies for self-regulation resulted in a denial of FAPE for 2006 ESY.

39. Based on Factual Finding 128, District's failure to address Student's behavior needs at the beginning of the 2006-2007 school year likely contributed to Student's behavior outburst on the school bus in October 2006 during which he threatened to kill everyone. District's failure to offer instruction in appropriate communication and strategies for self-regulation resulted in a denial of FAPE for the 2006-2007 school year.

Did District deny Student a FAPE during the 2006-2007 school year by the following:

Failing to provide adequate transportation services?

40. Related services specifically includes transportation services. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a); see also 34 C.F.R. § 300.107(b) [transportation is a nonacademic service that may be required by an IEP].) Transportation includes travel to and from school. (34 C.F.R. § 300.34(c)(16).)

41. As determined in Factual Finding 127, District provided curb-to-curb transportation to Student during the 2006-2007 school year. Because Student lives so close to High School, he was required to stay on the bus for two trips so that he did not arrive at

school before 7:30 a.m., because of Mother's concerns about his safety. Upset at not being able to get off when first arriving at school, Student threatened to kill everyone on the bus. The evidence shows that Student's time on the bus was short. The evidence does not show that District failed to provide adequate transportation services.

Failing to implement the reading program?

Failing to maintain the required student-to-teacher ratio?

Failing to deliver required speech-language services?

42. In order to show that a school district violated the IDEA regarding its implementation of an IEP, there must be a "material" failure to implement the IEP. (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822.) A material failure requires more than a minor discrepancy between the services provided and those required by the IEP. (*Ibid.*) The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. (*Ibid.*) However, the child's educational progress, or lack of it, may be probative of whether there was more than a minor shortfall in services. (*Ibid.*) A shortfall in services and a shortfall in the child's achievement in that area tends to show that the failure to implement the IEP was material. (*Ibid.*) Similarly, if the child performed at or above the anticipated level of achievement would tend to show that the shortfall in services was not material. (*Ibid.*)

43. As determined in Factual Finding 144, District failed to provide Student eight sessions of his reading program during the 2006-2007 school year. Since reading was a significant area of deficit for Student, missing two weeks' of his individualized reading program is a material failure, resulting in a denial of FAPE.

44. As determined in Factual Finding 145, District failed to maintain the required student-to-teacher ratios in one class during each semester of the 2006-2007 school year. There is no evidence about what impact, if any, the failure to comply with the ratios had on Student's progress. Given the small class size, even when not complying with the IEP, the evidence does not establish that this was a material failure to implement the IEP. As determined in Factual Finding 146, District failed to provide Student some speech and language services during fall 2006, but it provided additional services during spring 2007 which more than made up for those not provided.

From September 13 to October 2006, failing to develop a behavior plan?

45. As determined in Factual Finding 116, at the beginning of the 2006-2007 school year, Student had needs in the areas of inappropriate verbal expressions, work completion, inattention, off task behavior, and noncompliance that District did not address. Based on Factual Finding 128, Student's unmet behavioral needs likely contributed to a significant behavioral episode on the school bus. District's failure to provide a behavior plan from September 13 to October 2006 denied Student a FAPE.

From October 2006 to February 2007, failing to implement targeted instruction in appropriate communication and strategies for self-regulation?

46. As determined in Factual Finding 140, District implemented Student's behavior plan from October 2006 to February 2007, and provided him instruction in communication and strategies for self-regulation.

Failing to ensure District's offer in the May and June 2006 IEPs included all required information?

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

48. The IEP team shall document its rationale for placement in other than the student's school and classroom in which the student would otherwise attend if the student did not have a disability. The documentation shall indicate why the student's disability prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services. (Cal. Code Regs., tit. 5, § 3042, subd. (b).) This does not expressly require the team to document its rationale in the IEP document. However, this regulation is found in Article 4 of the regulations, which is titled, "Instructional Planning and Individualized Education Program." Subdivision (a) of section 3042 of the regulations defines an educational placement as specified in the IEP. Accordingly, it is reasonable to interpret subdivision (b) of section 3042 as requiring the IEP team to document its rationale in the IEP document.

49. As determined in Factual Finding 64, District failed in the May and June 2006 IEPs to include any proposed accommodations or modifications to meet Student's needs, and any information concerning the ESY services being offered, and included inadequate documentation of the rationale for placing Student in a more restrictive environment than a general education classroom. Without this information, Mother and Grandmother were denied an opportunity to meaningfully participate in the IEP process. As a result, District denied Student a FAPE.

50. As determined in Factual Finding 67, the May 2006 IEP documented Student's needs, as determined by the IEP team, and the services the team determined were needed to meet his needs and provide a FAPE. As determined in Factual Finding 60, neither the May nor June 2006 IEP was required to include a behavior plan or address Student's transition to high school.

Failing to have the May and June 2006 IEP teams consider Student's educational records?

51. When a student transfers into a school district, the new school district shall take reasonable steps to promptly obtain the student's educational records, including the IEP and supporting documents and any other records relating to the provision of special education and related services, from the previous school. (Ed. Code, § 56325, subd. (b)(1).) As determined in Factual Finding 66, District took reasonable steps to promptly obtain Student's educational records and the IEP team considered the information that was obtained.

Failing to ensure the attendance of required team members at the May and June 2006 IEP team meetings?

52. The IEP team is composed of the parents of the child with a disability; at least one of the child's regular education teachers if the student is or may be participating in the regular education environment; at least one of the child's special education teachers or, if appropriate, at least one of the child's special education providers; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction to meet the student's needs, and is knowledgeable about the general education curriculum and the availability of resources; a person who can interpret the instructional implications of evaluation results; other persons who have knowledge or special expertise regarding the student, at the discretion of the parent or school district; and the child, whenever appropriate. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321 (a); Ed. Code, § 56341, subd. (b).) A school district is responsible for determining which of its personnel will fill the roles for the district's required participants at an IEP team meeting. (71 Fed.Reg. 46674 (Aug. 14, 2006).) The regular education teacher who is a member of the IEP team need not be the child's current regular education teacher. (*R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 939.) The requirement that the IEP team include a regular education teacher if the student is or may be participating in a regular education classroom is a mandatory, not discretionary, requirement. (*M.L. v. Federal Way School Dist.* (9th Cir. 2004) 394F.3d 634, 643.)

53. Based on Factual Findings 76, District failed to include a general education teacher at the June 2006 IEP team meeting, which was to discuss Student's schedule at High School. In the May 2006 IEP, District offered Student a general education class for physical education. District's failure to have a general education teacher at the June 2006 IEP team meeting District denied Student a FAPE.

*Refusing to allow Student to participate in the development of his class schedule?
Failing to provide Mother with timely information regarding the registration process and new student activities?*

54. As determined in Factual Finding 153, District did not in fall 2006 fail to allow Student to participate in the development of his class schedule; or fail to provide Mother with timely information regarding the registration process and the school's new student welcome ceremony.

Did District deny Student a FAPE for the 2006-2007 and 2007-2008 school year by the following:

Failing to develop an effective plan for reducing inappropriate behavior?

55. As determined in Factual Finding 117, District offered, and Mother consented to, two behavior plans in October 2006. One plan addresses Student's verbal expressions, and the other, his noncompliant behavior. Each contains a systematic program that includes instruction to develop appropriate behavior, and was reasonably calculated to produce significant improvement in Student's behavior. District developed an effective plan for reducing Student's use of inappropriate verbal expressions, and for reducing Student's noncompliance with rules and directives during the 2006-2007 school year.

56. As determined in Factual Findings 119, Student had unmet needs in the areas of work completion, inattention and off task behavior during the 2006-2007 school year. District failed to offer a plan for reducing these behaviors. District's failure to provide behavioral services and interventions to meet these needs interfered with his educational progress and denied him a FAPE during the 2006-2007 school year.

57. As determined in Factual Finding 156, District offered a behavior plan in May 2007 to address Student's inappropriate verbal expressions that met Student's needs in that area. As determined in Factual Finding 178, District did not offer any goal to address Student's need in the area of noncompliance. Nor did District offer a behavior plan to address this area of need. District's failure to provide a behavior plan to address Student's noncompliance resulted in a denial of FAPE.

From February 2007 to 2007-2008 school year, failing to utilize, sufficiently skilled staff members to deliver instruction in appropriate communication and strategies for self-regulation?

58. As determined in Factual Finding 141, from February 2007 to the end of the 2006-2007 school year, District provided sufficiently skilled staff to instruct Student concerning communication and strategies for self-regulating in stressful situations. As determined in Factual Finding 179, the evidence does not show that District did not use sufficiently skilled staff to instruct Student concerning communication and strategies for self-regulating in stressful situations during the 2007-2008 school year. Accordingly, it is found that District did use sufficiently skilled staff.

59. As determined in Factual Finding 179, Student did not attend District's 2007 ESY. Therefore, his allegation that District did not use sufficiently skilled staff during 2007 ESY is dismissed as moot.

Failing to implement behavioral supports?

60. As determined in Factual Finding 140, District implemented the behavior plan concerning inappropriate verbal expressions and self-regulation during the 2006-2007 school year. As determined in Factual Finding 180, the evidence does not show that District did not implement Student's behavior plans during the 2007-2008 school years. Accordingly, it is found that District implemented the behavior plans.

61. As determined in Factual Finding 142, District failed to implement behavior supports concerning noncompliant behavior as required by the behavior plan during a portion of the 2006-2007 school year. District's failure to implement Student's behavior plan concerning noncompliant behavior did not result in a denial of FAPE.

Requiring Mother to unreasonably oversee implementation of Student's IEP?

62. As determined in Factual Finding 148, Mother actively participated in the development of Student's IEP and educational program. While District fell short in certain areas, it also appropriately implemented Student's IEPs in other areas. Mother's involvement with Student's IEP and its implementation was not at any time unreasonably required to ensure District's compliance with the IEP.

Requiring Mother to find and fund materials and instruction?

63. As determined in Factual Finding 149, Mother believed Student's SDC classes did not have reading materials that were at an appropriate reading level or concerned age-appropriate subject matter for Student. District staff located appropriate books in the school's library, and agreed to order books that Mother requested. The evidence does not show that Mother's efforts were at any time required to provide Student with materials to meet his needs.

Failing to include competitive wrestling in the IEP?

64. Supplementary aids and services are aids, services, or other supports provided in regular education classes or other education-related settings to enable a student to be educated with nondisabled children to the maximum extent appropriate. (34 C.F.R. § 300.42; Ed. Code, § 56033.5.) A school district must provide supplementary aids and services determined appropriate and necessary by the IEP team to provide nonacademic and extracurricular services and activities in the manner necessary to afford a child with a disability an equal opportunity for participation in those services and activities. (34 C.F.R. § 300.107(a).) Nonacademic and extracurricular services and activities may include athletics and recreational activities. (34 C.F.R. 300.107(b).) A school district must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. A school district must ensure that each child has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic

settings. (34 C.F.R. § 300.117.) A school district must ensure that a student participates in activities with nondisabled pupils to the maximum extent appropriate, including nonacademic and extracurricular activities. (Ed. Code, § 56364.2, subd. (b).)

65. Related services includes supportive services, such as speech-language services, psychological services, and recreation services. (Ed. Code, § 56363, subds. (a), (b)(15).) Recreation services include therapeutic recreation services which are specialized instructional programs designed to assist students become as independent as possible in leisure activities and if appropriate, facilitate the pupil's integration into regular recreation programs. (Cal. Code Regs., tit. 5, § 3051.15, subd. (a).) They also include recreation programs in schools and the community which emphasize the use of leisure activity in the teaching of academic, social, and daily living skills, and the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities. (*Id.*, subd. (b).)

66. As determined in Factual Findings 124, 125, 198, and 199, District was not required to include Student's participation in competitive wrestling in his IEP during the 2006-2007 or 2007-2008 school years in order to receive a FAPE in the LRE.

Did District deny Student a FAPE during the 2006 ESY and 2007 ESY because the programs: Lacked instructors sensitive to Student's needs; Failed to address Student's needs related to transitioning to high school; Placed him with inappropriate age and grade groups; Offered too low a level of instruction; Did not include use of appropriate behavioral strategies by his instructors; and Did not address his deficits in key academic areas?

67. ESY services shall be included in a student's IEP if the IEP team determines that the services are necessary to provide a FAPE. (34 C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3); Cal. Code Regs., tit. 5, § 3043, subd. (f).) ESY services shall be provided to a student who has unique needs and requires special education and related services in excess of the regular academic year. (Cal. Code Regs., tit. 5, § 3043.) A school district may not limit unilaterally limit the type, amount, or duration of ESY services. (34 C.F.R. § 300.106(a)(3)(ii).)

68. As determined in Factual Finding 41, District did not offer, during 2006 ESY, any behavioral services to assist Student to self-regulate, and did not develop a plan to reduce his inappropriate behaviors. As determined in Factual Finding 48, District failed to ensure that instructors during 2006 ESY used appropriate behavioral strategies. As determined in Factual Finding 49, District did not meet his needs in the area of reading during 2006 ESY. District's failure to meet Student's behavioral needs likely resulted in Student's regression in reading and failure to make progress. District denied Student a FAPE during 2006 ESY.

69. As determined in Factual Finding 181, because there is no evidence of the specific program District offered, the evidence does not show that the 2007 ESY program lacked instructors sensitive to Student's needs; failed to address Student's needs related to transitioning to high school; placed him with inappropriate age and grade groups; offered too

low a level of instruction; did not include use of appropriate behavioral strategies by his instructors; and did not address his deficits in key academic areas.

Did District deny Student a FAPE for the 2007 ESY and the 2007-2008 school year by failing to consider and offer Stowell as the placement?

70. As determined in Factual Finding 186, District did not consider Mother's concerns about Student that gave rise to her request for placement at Stowell. District had an obligation to actively and sincerely consider Mother's request. District's failure to do so denied Mother an opportunity to meaningfully participate in the IEP process. District denied Student a FAPE.

71. As determined in Factual Finding 188, it is clear from Student's areas of need, present levels of performance, and his annual goals, that he has significant deficits in the core academic areas of reading, written expression, and math. While District did not offer Student all the services and supports that he needed to meet his needs, the evidence does not show that Student required placement at Stowell, or that Stowell could provide him a FAPE. District was not required to offer Student placement at Stowell for either 2007 ESY or the 2007-2008 school year.

Did District deny Student a FAPE for the 2007-2008 school year, by the following:

Failing to present the general education curriculum at a modified level, with sufficient staff support, including one-to-one instruction?

72. As determined in Factual Findings 193 and 195, the evidence established that District sufficiently modified the curriculum in Student's general education world history class, was not required to modify the curriculum in his other general education classes and provided sufficient staff support for him to make educational progress during the 2007-2008 school year.

Failing to offer an adequate individual transition plan (ITP)?

73. Beginning at age 16 or younger, the IEP must include a statement of needed transitions services for the child. (Ed. Code, §§ 56043, subd. (h).) The IEP in effect when a student reaches 16 years of age must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills, and the transition services needed to assist the student in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).)

74. Transition services are a coordinated set of activities that are designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing

and adult education, adult services, independent living, or community participation; is based on the student's needs, taking into consideration the student's strengths, preferences and interests; and includes instruction, related services community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocation evaluation. (20 U.S.C. § 1402(34); Ed. Code, § 56345.1, subd. (a).)

75. A transition plan comprised of generic and vague post-high school goals and services that is equally applicable to almost any high school student that, not based on the specific student's needs or take into account the student's strengths, preferences, and interests, does not comply with the procedural requirements of the IDEA. (*Virginia S. v. Dept. of Educ.* (D.Hawaii, Jan. 8, 2007, Civil No. 06-00128 JMS/LEK) 2007 U.S. Dist. Lexis 1518.) When a transition plan fails to comply with the procedural requirements, but provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Ibid.*) A transition plan that is procedurally deficient, but does not result in a loss of educational opportunity may not result in a denial of FAPE. (*Ibid.*; *Bd. of Educ. v. Ross* (7th Cir.) 486 F.3d 267, 277.)

76. As determined in Factual Findings 202, Student's ITP does not include adequate transition services for Student. The ITP's career goals are unrealistic for Student and no transition services are offered to facilitate his movement from school to post-school activities. When considering Student's academic deficits as he moved into his tenth grade year at High School, he had an obvious need for transition services to prepare him for life after high school. The ITP offered no meaningful services, resulting in a loss of educational opportunity. District failure to offer an adequate ITP for the 2007-2008 school year denied him a FAPE.

Refusing to document the proposed placement at the September 2007 IEP?

77. As determined in Factual Findings 205 through 207, District and Mother discussed amending the 2006 IEP. In the process, District required Mother to sign a narrative page in order to amend the 2006 IEP. There is no legal requirement that the narrative page be included in order to amend the September 2006 IEP. However, Student has not shown that requiring the amendment resulted in a violation of the law.

Failing to properly implement Mother's partial consent to the proposed class schedule?

78. As determined in Factual Finding 210, District failed to fulfill its obligation to implement only the portion of the amendment to the 2006 IEP to which Mother consented. By implementing the portion to which she did not consent, District assigned Student failing grades in classes he did not attend, which negatively affected Student's emotional well-being and academic transcript. District's implementation of course schedule to which Mother did not consent denied Student a FAPE during the 2007-2008 school year.

At the May 17 and September 6, 2007 IEP team meetings, failing to provide prior written notice?

79. A school district must provide written notice to the parents of a child before it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4.) The notice shall include, among other things, a description of the action the school district proposes or refuses; an explanation of why the school district proposes or refuses to take the action; and a description of other options considered by the IEP team and the reason those options were rejected. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.) The comments to the federal regulation indicate that prior written notice shall be provided at a reasonable time before the school district implements the proposal or refusal that is the subject of the notice. (71 Fed.Reg. 46691 (Aug. 14, 2006).) The comments assume that a school district will convene an IEP team meeting after it formulates its proposed action or refusal, and then provide prior written notice of its decision to implement the proposed action or refusal. (*Ibid.*)

80. As determined in Factual Finding 213, District was not required to provide prior written notice at the May or September 2007 meetings.

At the May 17 and September 6, 2007 IEP team meetings, failing to provide a clear written offer of the District's proposed placement and services?

81. A school district must provide a parent with a specific, formal written offer of the placement and services it is offering a student. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; *Glendale Unified Sch. Dist. v. Almasi* (C.D. Calif. 2000) 122 F.Supp.2d 1093, 1107.) A formal written offer is necessary for the parents to understand exactly what the school district is offering so that the parent can determine whether the offer is appropriate. (*Ibid.*) The requirement of a specific, formal written offer serves an important purpose that is not merely technical. (*Ibid.*) The requirement must be enforced rigorously. (*Ibid.*) A school district must provide a parent a clear, coherent written offer that the parent can reasonably evaluate in order to decide whether to accept or appeal the offer. *Glendale Unified Sch. Dist. v. Almasi, supra*, 122 F.Supp.2d at p. 1108.)

82. As determined in Factual Finding 217, neither the May 2007 IEP nor the October 2007 amendment to the 2006 IEP was a clear and coherent offer. The evidence shows that even at the time of the hearing in this matter, District staff were unsure about what District offered Student for the 2007-2008 school year. Since District staff were uncertain about the offer, it was not possible for Mother to have a clear understanding of what was offered in May or September. District denied her an opportunity to meaningfully participate in the decision-making process, and denied Student a FAPE.

Determination of Relief

83. It has long been recognized that equitable factors may be considered when fashioning relief for violations of the IDEA. (*Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496, citing *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996].) Compensatory education is an equitable remedy; it is not a contractual remedy. (*Parents of Student W. v. Puyallup Sch. Dist., No. 3, supra*, 31 F.3d at p. 1497.) Relief is appropriate that is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*) The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied. (*Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.)

84. A district may be required to reimburse a student's parents for the costs of a private school if the child previously received special education and related services from the district and the district failed to make a FAPE available to the child. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); Ed. Code, § 56175.)

85. Reimbursement for the costs of a private school may be reduced or denied if the parents did not give written notice to the school district ten business days before removing their child from the public school that they were rejecting the proposed placement, state their concerns, and express their intent to enroll the student in a private school at public expense. (20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); Ed. Code, § 56176.) Factors to be considered when determining the amount of reimbursement include the existence of other, more suitable placements, the effort expended by the parent in securing alternative placements and the general cooperative or uncooperative position of the school district. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23, supra*, 960 F.2d at p. 1487; *Glendale Unified Sch. Dist. v. Almasi, supra*, 122 F.Supp.2d at p. 1109.)

86. An Administrative Law Judge may not render a decision that results in the placement of a student in a nonpublic, nonsectarian school, or that results in services provided by a nonpublic, nonsectarian agency if the school or agency has not been certified under Education Code section 56366.1. (Ed. Code, § 56505.2, subd. (a).)

87. As determined in Factual Findings 9, 25 through 27, 29, 41, 48 through 50, 59, 62 through 64, 74, 76, 88, 90, 92, 94 through 96, 98, 101, 102, 104, 107, 111, 113, 116, 119, 137, 144, 151, 165, 167, 168, 170 through 172, 174, 175, 177, 178, 186, 202, 210, and 217, District committed a substantial number of violations, both substantive and procedural, in a variety of areas which denied Student a FAPE for two years, from 2006 ESY through the 2007-2008 school year. These violations resulted in the loss of educational opportunity to Student and denied Mother a meaningful opportunity to participate in the decision-making process concerning her son's education. The nature and extent of these violations call for comprehensive relief.

88. As determined in Factual Findings 221 through 223, Dr. Bailey and Dr. Perlman were impressed with services Stowell provides and Student's progress in the program. Dr. Bailey's persuasive testimony established that Student's interventions need to

be structured, multi-sensory and individualized for Student's needs. While acknowledging that some of the interventions Stowell uses, such as Samonas, are not well-researched, Stowell's use of the intervention did not preclude her from finding that Stowell offers programs that are beneficial for Student. Dr. Bailey and Dr. Perlman established that Stowell provides appropriate programs that meet Students needs.

89. Weighing the evidence and considering equitable factors, District shall reimburse Student for services provided by Stowell from June 2007 through the date of this decision. This shall include the actual cost of services up to \$73 per hour, plus any license fees, materials fees, or comparable expenses that were required to be paid to receive the services. District shall also reimburse Student for the cost of transportation required to attend Stowell. The evidence shows that between June 2007 and March 2008, he received 555 hours of services, at \$73 per hour, for a total of \$40,515. The cost of transportation from September 17, 2007, through April 4, 2008, was \$2,682.50. Reimbursable transportation costs include mileage and the cost of an adult other than a family member who is paid to provide transportation services. District shall reimburse Student within 45 days of the submission of invoices showing amounts paid, cancelled checks, or other similar, reasonable documentation of reimbursable expenses.

90. Student's requested prospective placement to allow him to finish the curriculum at Stowell. Stowell is no longer certified by CDE and OAH has no authority to order Student to receive services from an NPA that is not certified by CDE.

91. Student offered no evidence concerning the type or amount of compensatory educational services necessary to provide the educational benefit to which he is entitled. Student has requested 600 hours of compensatory education to be used by his 25th birthday. There is no basis in the record supporting this amount. Student received intensive, individualized services from Stowell for the past year. Reimbursement for those services is reasonably calculated to provide Student the educational benefit he lost as a result of District's denial of FAPE.

92. Student is entitled to a comprehensive assessment concerning his need for AT devices or services. The assessment shall be performed by an independent assessor chosen by Student. The cost of the assessment shall not exceed \$2,000.

93. District has not met Student's behavioral needs. Student requests that his behavior plan be updated to address specifically identified behavior. However, District has not performed a systematic assessment of Student's behavior. Accordingly, a functional analysis assessment (FAA) of Student's behavior meeting the requirements of California Code of Regulations, title 5, section 3052, subdivision (b), shall be conducted. An FAA report meeting the requirements of subdivision (b)(2) shall be prepared and presented to Student's IEP team for consideration. The assessment shall be performed by an independent assessor chosen by Student, who shall meet the requirements of California Code of Regulations, title 5, section 3052, subdivision (b). District shall convene an IEP team within the legal timeframes to consider the results of the assessments and to develop any behavioral

services or interventions needed to meet Student's behavioral needs. The cost of the assessment shall not exceed \$5,000.

94. District shall, as requested by Student, award elective course credits for his time at Stowell equal to the number of credits that would be awarded for an elective course with the same number of instructional hours as he spent at Stowell.

95. As determined in Factual Finding 208, District assigned failing grades to Student during the 2007-2008 school year for courses he did not attend because Mother did not consent to them as part of his educational program. District violated his special education rights by doing so. The only suitable remedy is for District to rescind the grades and remove them from Student's transcript.

96. Student requested a prospective placement for the 2008-2009 school year. There is insufficient evidence to order prospective placement and Stowell alone is not an appropriate placement. The findings in this decision and the results of the assessments that are to be provided will provide the IEP team relevant information to develop a program to meet Student's needs and provide a FAPE.

97. Student requested reimbursement for tutoring services provided during June through August, 2007. There is insufficient evidence concerning the services to support their reimbursement. Similarly, there is insufficient evidence in the record to determine that the other relief Student requested is necessary to provide the educational benefits that likely would have accrued from special education services the school district should have supplied.

ORDER

1. District shall reimburse Student for services provided by Stowell from June 2007 through the date of this decision in the amount and manner consistent with this decision. District shall reimburse Student for costs determined in this decision within 45 days of the date of the decision. District shall reimburse Student within 45 days of the submission of invoices showing amounts paid, cancelled checks, or other similar, reasonable documentation of additional reimbursable expenses as authorized by this decision.

2. District shall provide Student with a comprehensive assessment concerning his need for AT devices or services. The assessment shall be performed by an independent assessor chosen by Student. The cost of the assessment shall not exceed \$2,000.

3. District shall provide Student with a functional analysis assessment (FAA) meeting the requirements of California Code of Regulations, title 5, section 3052, subdivision (b). An FAA report meeting the requirements of subdivision (b)(2) shall be prepared and presented to Student's IEP team for consideration. The assessment shall be performed by an independent assessor chosen by Student, who shall meet the requirements of California Code of Regulations, title 5, section 3052, subdivision (b). District shall convene

an IEP team within the legal timeframes to consider the results of the assessments and to develop any behavioral services or interventions needed to meet Student's behavioral needs. The cost of the assessment shall not exceed \$5,000.

4. District shall, as requested by Student, award elective course credits for his time at Stowell equal to the number of credits that would be awarded for an elective course with the same number of instructional hours as he spent at Stowell.

5. District shall take whatever action is required to permanently remove the failing grades from Student's transcript and all educational records that were assigned to him during the 2007-2008 school for the classes to which Mother did not consent.

6. All other relief is denied.

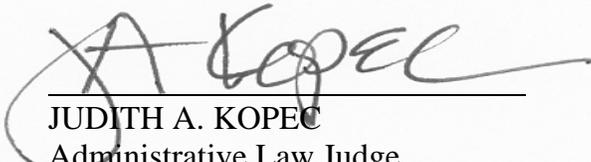
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. Student prevailed on Issues 1, 4a through 4f, 4j, 5e, 6b, 6e, 6f, 7a, 10b, 10d, and 10f. District prevailed on Issues 2, 3, 4g through 4i, 5 a through d, 5h, 5j, 5k, 7b, 7d through 7f, 8b through 8d, 10a, and 10e. The parties equally prevailed on Issues 6c, 6g, 6i, 7c, 8a, 8e, 8f, and 10c.

RIGHT TO APPEAL THIS DECISION

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

Dated: June 26, 2008



JUDITH A. KOPEC
Administrative Law Judge
Office of Administrative Hearings