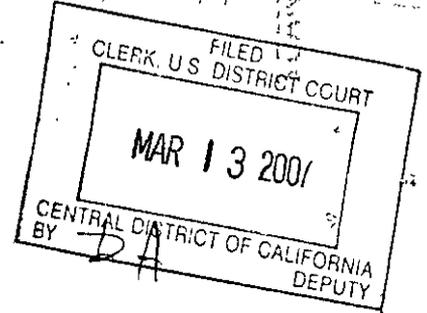
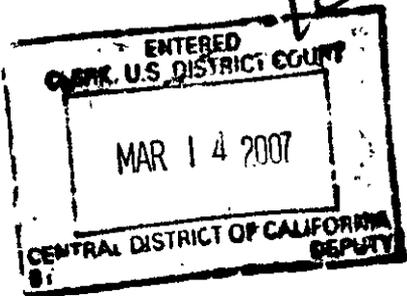


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

L.M., a minor, by and through his Guardians ad litem, SAM M. AND MARIETTE M.; SAM M. On his own behalf; and MARIETTE M. on her own behalf,

Plaintiffs,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT,

Defendant.

CV 06-3049 ABC(JCx)

ORDER RE: APPEAL OF ADMINISTRATIVE DECISION DATED MARCH 28, 2006

This case arises from a dispute regarding the provision of educational services to a disabled child, Plaintiff L.M. Plaintiff L.M., via his guardians ad litem Sam M. and Mariette M. (collectively, "Plaintiffs"), have sued the Capistrano Unified School District ("Defendant") for alleged violations of the Individuals with Disabilities Education Act, 20 U.S.C. §§1400, et seq. ("IDEA"). Plaintiffs' claims were initially heard in a due

1 process hearing conducted by the California Office of  
2 Administrative Hearings, Special Education Division on February 7<sup>th</sup>  
3 through 10<sup>th</sup>, 2006. Following the administrative hearing,  
4 Administrative Law Judge Suzanne B. Brown ("ALJ Brown") issued a  
5 lengthy decision ("ALJ Decision"). Plaintiffs contest the outcome  
6 of the hearing, arguing various procedural and substantive  
7 violations of the IDEA. Plaintiffs filed their trial brief on  
8 November 6, 2006, Defendant opposed on December 4, 2006, and  
9 Plaintiffs replied on December 15, 2006.

## 10 I. LEGAL STANDARD

### 11 A. The IDEA.

12 The IDEA, guarantees all disabled children a "free appropriate  
13 public education" ("FAPE") which "emphasizes special education and  
14 related services designed to meet their unique needs and prepare  
15 them for further education, employment, and independent living."  
16 20 U.S.C. §1400(d)(1)(A). A FAPE is defined as special education  
17 and related services that: (1) are available to the student at  
18 public expense, under public supervision and direction, and without  
19 charge; (2) meet the state education standards; (3) include an  
20 appropriate education in the state involved; and (4) conform with  
21 the student's Individualized Education Program ("IEP"). 20 U.S.C.  
22 §1401(9).

23 An IEP is a written statement containing the details of the  
24 individualized education program for a specific child, which is  
25 crafted by a team that includes the child's parents and teacher, a  
26 representative of the local education agency, and, whenever  
27 appropriate, the child. 20 U.S.C. §1401(14), §1414(d)(1)(B). An  
28 IEP must contain: (1) information regarding the child's present

1 levels of performance; (2) a statement of annual goals and short-  
2 term instructional objectives; (3) a statement of the special  
3 educational and related services to be provided to the child; (4)  
4 an explanation of the extent to which the child will not  
5 participate with non-disabled children in the regular class; and  
6 (5) objective criteria for measuring the child's progress. 20  
7 U.S.C. §1414(d).

8 In addition to these substantive provisions, the IDEA contains  
9 numerous procedural safeguards. The local educational agency must  
10 provide the parents or guardians of a disabled child prior written  
11 notice of any proposed change in the identification, evaluation, or  
12 educational placement of the child. 20 U.S.C. §1415(b)(3). The  
13 agency also must give parents an opportunity to present complaints  
14 regarding any matter related to the education or placement of the  
15 child, or the provision of a FAPE to the child. 20 U.S.C.  
16 §1415(b)(6). Upon the presentation of such a complaint, the parent  
17 or guardian is entitled to an impartial due process administrative  
18 hearing conducted by the state or local educational agency, as  
19 determined by state law or by the state educational agency.

20 **B. Judicial Review of Administrative Decisions Under the**  
21 **IDEA.**

22 The IDEA provides that a party aggrieved by the findings and  
23 decision made in a state administrative due process hearing has the  
24 right to bring an original civil action in federal district court  
25 (or, in a state court of competent jurisdiction) in order to secure  
26 review of the disputed findings and/or decision. 20 U.S.C.  
27 §1415(i)(2). The party challenging the decision bears the burden  
28 of persuasion on its claim. Clyde K. v. Puyallup Sch. Dist., No.

1 3, 35 F.3d 1396, 1399 (9th Cir. 1994) (superseded by statute on  
2 other grounds).

3 The standard for district court review of an administrative  
4 decision under the IDEA is set forth in 20 U.S.C. §1415(i)(2),  
5 which provides as follows:

6 "In any action brought under this paragraph the  
7 court - (i) shall receive the records of the  
8 administrative proceedings; (ii) shall hear  
9 additional evidence at the request of a party;  
and (iii) basing its decision on the  
preponderance of the evidence, shall grant such  
relief as the court determines is appropriate."

10 This standard requires that "due weight" be given to the  
11 administrative proceedings. Bd. of Educ. of the Hendrick Hudson  
12 Central Sch. Dist. v. Rowley, 458 U.S. 176, 206 (1982). The amount  
13 of deference accorded is subject to the court's discretion.  
14 Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1311 (9th Cir.  
15 1987). In making this determination, the thoroughness of the  
16 hearing officer's findings should be considered, and the degree of  
17 deference increased where the hearing officer's findings are  
18 "thorough and careful." Capistrano Unified Sch. Dist. v.  
19 Wartenberg, 59 F.3d 884, 892 (9th Cir. 1995) (citing Union Sch.  
20 Dist. v. Smith, 15 F.3d 1519, 1524 (9th Cir. 1994). "Substantial  
21 weight" is given to the hearing officer's decision where it  
22 "evidences his careful, impartial consideration of all the evidence  
23 and demonstrates his sensitivity to the complexity of the issues  
24 presented." County of San Diego v. Cal. Special Educ. Hearing  
25 Office, 93 F.3d 1458, 1466 (9th Cir. 1996) (internal citations  
26 omitted). This high degree of deference is warranted because "if  
27 the district court tried the case anew, the work of the hearing  
28

1 officer would not receive 'due weight' and would be largely  
2 wasted." Capistrano, 59 F.3d at 891.

3 Because of the deference to be accorded to the hearing  
4 officer's decision, a de novo review is not appropriate. Amanda J.  
5 v. Clark County Sch. Dist., 267 F.3d 877, 887 (9th Cir. 2001).

6 Thus, the district court must make an independent judgment based on  
7 a preponderance of the evidence and giving due weight to the  
8 hearing officer's determination. Capistrano, 59 F.3d at 892.

9 After making such a finding, the district court may accept or  
10 reject the hearing officer's findings in whole or in part. Ojai  
11 Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1473 (9th Cir 1993).

12 In this case the hearing officer, ALJ Brown issued a lengthy,  
13 detailed opinion. She supported her findings with testimony and  
14 documentary evidence presented by the parties during the hearing.  
15 ALJ Brown's decision was impartial, and her reasoning reflected her  
16 detailed understanding of the complexities of the case. Thus, her  
17 decision is entitled to substantial weight.

## 18 II. FACTUAL BACKGROUND

19 Plaintiff L.M. was diagnosed with autism in July 2004 when he  
20 was two and one half years old. He consequently suffers from  
21 deficits in communication, self-help, social and play skills. He  
22 also displays maladaptive behaviors in the form of non-compliance,  
23 inattention, and tantruming as well as perseverative and self-  
24 stimulatory behaviors. As a child with disabilities who resides  
25 within the boundaries of Defendant school district, Plaintiff L.M.  
26 is entitled to special education and related services in accordance  
27 with IDEA.

28

1 Prior to Plaintiffs' initial IEP meetings on January 10 and  
2 22, 2005, Plaintiff L.M. was receiving 25-30 hours per week of  
3 intensive services in his home. The services were first provided  
4 by Autism Comprehensive Educational Services ("ACES"), and were  
5 paid for in part by Plaintiff L.M.'s parents. When an opening  
6 became available in September 2005, Plaintiff L.M. was placed with  
7 the Center for Autism and Related Disorders ("CARD"). The CARD  
8 services were also provided in Plaintiff L.M.'s home, and were paid  
9 for by Plaintiff L.M.'s parents.

10 As a result of the January 2005 IEP, the Defendant offered  
11 Plaintiff L.M. a placement at Palisades Elementary School  
12 ("Palisades") in a "structured autism" program, as well as  
13 individual intensive behavioral instruction for four hours per  
14 week, speech and language therapy, and other services. (ALJ  
15 Decision, p.3, ¶5).

16 Plaintiff L.M.'s parents visited Palisades twice, once  
17 accompanied by the Palisades principal, and once accompanied by Dr.  
18 Melanie Lenington ("Dr. Lenington"). (ALJ Decision, p.4, ¶6). Dr.  
19 Lenington is a licensed psychologist who was conducting an  
20 independent assessment of Plaintiff L.M. (Id.). Dr. Lenington  
21 expressed a desire to conduct 90 minutes of observation at  
22 Palisades. However, the observation was limited to 20 minutes  
23 pursuant to district-wide policy. (Id.) Due to logistical issues,  
24 Dr. Lenington did not return to Palisades to conduct any further  
25 observation. (Id.).

26 Following the January 2005 IEP, Plaintiff L.M.'s parents did  
27 not inform the Defendant of their decision regarding the  
28 Defendant's placement offer, and Plaintiff L.M. did not enroll in

1 the services offered by Defendant. (ALJ Decision, pp.3-4, ¶¶5-7).  
2 Rather, in March 2005, Plaintiffs filed a request for a due process  
3 hearing, alleging that the Defendant's January 2005 IEP offer  
4 denied Plaintiffs a FAPE. (ALJ Decision, p.4, ¶7).

5 Following Plaintiffs' request for a due process hearing,  
6 Defendant wrote a letter to Plaintiff L.M.'s parents reiterating  
7 the District's January 2005 IEP offer, and offering additional  
8 services in response to specific concerns raised by Plaintiffs in  
9 the due process hearing request. (ALJ Decision, p.4, ¶8). The  
10 additional services included a "transition plan" geared toward  
11 assisting Plaintiff L.M. with the transition from his in-home  
12 services to enrollment in the Palisades Elementary School program.  
13 (Id.).

14 In May 2005, Plaintiff L.M.'s parents requested another IEP  
15 meeting to discuss the Defendant's offer. The meeting was convened  
16 on June 7, 2005. However, during the meeting a dispute arose  
17 between Plaintiff L.M.'s Father and the members of Defendant's IEP  
18 team. As a result, at the end of the meeting the IEP team members  
19 gave Plaintiff L.M.'s Father a copy of Defendant's "Civility  
20 Policy." (ALJ Decision, p.5, ¶9). Following the meeting,  
21 Defendant's most recent IEP offer was again provided to Plaintiffs  
22 in a June 13, 2005 letter. (Id.).

23 Following the June 2005 IEP, Plaintiff L.M. continued to  
24 receive in-home services through ACES (and beginning in September  
25 2005, through CARD), paid for by his parents. (ALJ Decision, p.5,  
26 ¶¶9-11). Thus, at the time of the administrative hearing in this  
27 matter, Plaintiff L.M. was receiving approximately 36 hours per  
28 week of intensive one-on-one CARD services in his home, paid for by

1 his parents, as well as speech and language therapy services from  
2 The Speech, Language and Learning Center.

3 At the administrative hearing, ALJ Brown heard testimony from  
4 witnesses for both Plaintiffs and Defendant, including several  
5 experts in autism, speech and language pathology, and psychology.  
6 In the ALJ Decision, ALJ Brown addressed four issues: (1) whether  
7 Defendant offered Plaintiffs a FAPE in the least restrictive  
8 environment ("LRE") from January 22, 2005 through April 7, 2005;  
9 (2) whether Defendant offered Plaintiffs a FAPE in the LRE from  
10 April 7, 2005 through June 7, 2005; (3) whether Defendant offered  
11 Plaintiffs a FAPE in the LRE from June 7, 2005 to February 2006;  
12 and (4) whether Plaintiffs are entitled to reimbursement for  
13 privately funded services and prospective placement with his  
14 service providers (i.e., CARD and the Speech, Language and Learning  
15 Center).

16 In the ALJ Decision, ALJ Brown found that for the period from  
17 January 22, 2005 to April 7, 2005, Defendant did not provide  
18 Plaintiffs with a FAPE due to its failure to develop a "transition  
19 plan." (See ALJ Decision, p.18, ¶28). Thus, ALJ Brown ordered the  
20 Defendant to reimburse Plaintiffs in the amount of \$12,306.25 for  
21 the in-home ACES program provided from January 22, 2005 to April 7,  
22 2007. (ALJ Decision, p.19, ¶30). ALJ Brown also found that  
23 Defendant denied Plaintiffs a FAPE due to its failure to offer  
24 Plaintiff L.M. at least 30 minutes per week of individual speech  
25 and language therapy. (See ALJ Decision, p.18, ¶29). Thus, ALJ  
26 Brown ordered Defendant to reimburse Plaintiffs for one hour of  
27 speech-language therapy per week, provided during the period from  
28 January 22, 2005 to July 22, 2005, and from the start of the 2005-

1 2006 school year to the date of the ALJ Decision (i.e., March 28,  
2 2006). (ALJ Decision, p.19, ¶31).

3 Plaintiffs argue that in the ALJ Decision, ALJ Brown made  
4 various procedural and substantive errors, and seek reimbursement  
5 of all privately funded educational expenses incurred from the date  
6 of Plaintiff L.M.'s third birthday, January 22, 2005, to the date  
7 his next annual IEP was convened. Defendant, on the other hand,  
8 asserts that the ALJ Decision should be upheld in its entirety.

9 **III. ANALYSIS**

10 **A. The Alleged Procedural Violations.**

11 **1. Plaintiffs were denied the right to meaningfully**  
12 **participate in the IEP process due to the time**  
13 **limitations placed on Dr. Lenington's evaluation at**  
14 **Palisades.**

15 Plaintiffs argue that by placing a 20 minute time limitation  
16 on Dr. Lenington's observation at Palisades, Defendant violated  
17 California Education Code §56329(c). Plaintiffs argue that this  
18 procedural violation denied Plaintiffs the right to meaningfully  
19 participate in the IEP process. Defendant counters that, if  
20 anything, the limitation placed on Dr. Lenington's observation at  
21 Palisades is a mere technical violation, and thus does not  
22 constitute a procedural violation of the IDEA.

23 In the ALJ Decision, ALJ Brown noted that Dr. Lenington was  
24 not "particularly familiar with [Palisades] or other components of  
25 the District's program, and thus [her] testimony regarding the  
26 District's program carried less weight than that of Dr. Dores, who  
27 helped to design the program and continues to supervise it." (ALJ  
28 Decision, ¶24). ALJ Brown also stated: "given Dr. Dores' extensive  
knowledge about [Palisades], an additional 70 minutes of Dr.

1 Lenington's observation likely would not have significantly  
2 affected the weight given to her testimony regarding the  
3 appropriateness of the [placement at Palisades]." (ALJ Decision,  
4 ¶16).

5 While the Court does not disagree with ALJ Brown's assessment  
6 regarding the relative knowledge and credibility of the witnesses,  
7 the Court disagrees with ALJ Brown's conclusion that the time  
8 limits placed on Dr. Lenington's observation at Palisades did not  
9 constitute a procedural violation. In other words, the Court  
10 finds that contrary to Defendant's assertions, the limitations  
11 placed on Dr. Lenington's observation at Palisades were not mere  
12 technical violations of Cal. Edu. Code §56329. Rather, the limits  
13 placed on Dr. Lenington's observation at Palisades constitute a  
14 procedural violation of the IDEA by depriving Plaintiffs of the  
15 right to meaningfully participate in the IEP process.

16 ALJ Brown acknowledged that Plaintiffs' "opportunity [to  
17 observe at Palisades] was not equal to the [Defendant's] assessors  
18 opportunity to observe Plaintiff [L.M.] in his in-home program."  
19 (ALJ Decision, p.15, ¶17). Despite this, ALJ Brown concluded that  
20 the violation of Cal. Edu. Code §56329 did not rise to the level of  
21 a procedural violation of the IDEA. However, as Plaintiffs point  
22 out, the purpose of Cal. Edu. Code §56329 is to "level the playing  
23 field" - i.e., to ensure that students and their parents have an  
24 equal ability to present information regarding the school  
25 district's programs at the administrative hearing. See e.g.,  
26 Benjamin G. V. Special Educ. Hearing Office, 131 Cal. App. 4<sup>th</sup> 875,  
27 881 (2005). By limiting the time Dr. Lenington had to observe at  
28 Palisades, Defendant not only technically violated Cal. Edu. Code

1 §56329, Defendant also frustrated the purpose of Cal. Edu. Code  
2 §56329 by denying Plaintiffs the opportunity to gather evidence  
3 regarding the appropriateness placing Plaintiff L.M. at Palisades.  
4 The Court finds that this is a procedural violation of the IDEA.

5 "Among the most important procedural safeguards [provided by  
6 the IDEA] are those that protect the parents' right to be involved  
7 in the development of their child's educational plan. Parents not  
8 only represent the best interests of their child in the IEP  
9 development process, they also provide information about the child  
10 critical to developing a comprehensive IEP and which only they are  
11 in a position to know." Clark County Sch. Dist., 267 F.3d at 882.  
12 Thus, a procedural violation of this sort is adequate grounds for  
13 holding that the Defendant failed to provide a FAPE. Without ample  
14 opportunity to gather evidence to present at the IEP and/or to the  
15 hearing officer - i.e., without the opportunity to attempt to  
16 'level the playing field' - Plaintiffs were denied their right to  
17 meaningfully participate in the IEP, and thus were denied a FAPE.<sup>1</sup>

18 \\\

19 \\\

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20  
21 <sup>1</sup> Defendant also makes arguments regarding whether Plaintiffs  
22 should have made a formal request (in the form of a motion to the  
23 hearing officer) for further observation time. Defendant asserts  
24 that by failing to do so, Plaintiffs have waived their right to  
25 raise this issue at this time. However, Defendant does not cite  
26 adequate legal authority to support its position on this issue.  
27 Additionally, the Court views these arguments as a mere distraction  
28 from the ultimate issue - i.e., whether a procedural violation of  
the IDEA occurred. Thus, the Court rejects Defendant's arguments  
regarding the timeliness of Plaintiffs' objection to the time  
limits placed on Dr. Lenington's observations, as well as  
Defendant's arguments regarding the proper procedure for such an  
objection.

1           **2. Defendant did not unlawfully predetermine Plaintiff**  
2           **L.M.'s placement and services.**

3           Plaintiffs also argue that Defendant unlawfully predetermined  
4 Plaintiff L.M.'s placement and services. Defendant counters that  
5 both the administrative record and the ALJ Decision reflect that  
6 during the IEP, the parties discussed the options available, and  
7 that the Defendant's offer reflected the desires of Plaintiff L.M.  
8 as expressed by his parents. The Court agrees.

9           As ALJ Brown stated, Plaintiffs have provided "no evidence  
10 that the [Defendant's] staff had predetermined the IEP or were  
11 unwilling to consider input from the parents." (ALJ Decision,  
12 pp.14-15, ¶15). Plaintiffs have not provided any evidence to  
13 demonstrate that Defendant had a policy of refusing to consider  
14 one-on-one in-home services. See e.g., Deal v. Hamilton County Bd.  
15 Of Educ., 392 F.3d 840, 858 (6th Cir. 2005). Nor have Plaintiffs  
16 provided any evidence to demonstrate that Defendant independently  
17 developed an IEP that it presented to the parents, without  
18 considering the input of the parents, the student's regular  
19 teachers/instructors, or any representative of the student's prior  
20 placement. See e.g., W.G. v. Target Range Sch. Dist., 960 F.2d  
21 1479, 1485 (9th Cir. 1992). In other words, Plaintiffs have not  
22 presented any evidence that Defendant adopted a "take it or leave  
23 it" posture at the IEP. See e.g., id.

24           The record of the administrative proceeding, as well as the  
25 ALJ Decision, reflect that Defendant allowed Plaintiffs an ample  
26 opportunity to present evidence and opinions to the Defendant,  
27 question the Defendant's proposed placement, offer alternatives,  
28 and to provide any other input that they felt to be important.

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1 (See ALJ Decision, p.4, ¶8 and p.14, ¶15). As a result, the Court  
2 agrees with ALJ Brown that Defendant did not unlawfully  
3 predetermine Plaintiff L.M.'s placement, and thus no procedural  
4 violation occurred.

5 **3. Defendant did not refuse to allow Plaintiff L.M.'s**  
6 **Father to meaningfully participate in the June 7,**  
7 **2005 IEP.**

8 Plaintiffs assert that Defendant refused to allow Plaintiff  
9 L.M.'s Father to meaningfully participate in the June 7, 2005 IEP.  
10 However, the record of the administrative proceeding, as well as  
11 the ALJ Decision, reflect that any breakdown in communication at  
12 the June 7, 2005 IEP was due to a variety of factors - not the  
13 least of which was Plaintiff L.M.'s Father's desire to have his  
14 questions answered, regardless of whether his questions were  
15 relevant to the issues on the agenda for the IEP, or whether the  
16 IEP was an appropriate forum for his particular questions and  
17 concerns. As ALJ Brown stated in the ALJ Decision: "the  
18 [Defendant] was not obligated to let [Plaintiff L.M.'s Father]  
19 decide the entire agenda of the IEP meeting, to the exclusion of  
20 other pertinent, noticed topics. . ." (ALJ Decision, p.17, ¶25).

21 Again, the Court notes that ALJ Brown issued a lengthy,  
22 detailed opinion, and supported her findings with testimony and  
23 documentary evidence presented by the parties during the hearing.  
24 As a result, ALJ Brown's decision is entitled to substantial  
25 weight, and the Court declines to disturb ALJ Brown's findings on  
26 this issue. Thus, the Court finds that Defendant did not refuse to  
27 allow Plaintiff L.M.'s Father to meaningfully participate in the  
28 June 7, 2005 IEP, and thus no procedural violation occurred.

\\

1           **B. The Alleged Substantive Violations.**

2           Because the Court has determined that Defendant's violation of  
3 Cal. Edu. Code §56329(c) constitutes a procedural violation which  
4 denied Plaintiffs the right to meaningfully participate in the IEP  
5 process, it is not necessary for the Court to address Plaintiffs'  
6 arguments regarding alleged substantive violations of the IDEA.

7           **C. The Requested Relief.**

8           Plaintiffs assert that as a result of the procedural and  
9 substantive violations, the ALJ Decision should be reversed and  
10 Defendant should be ordered to reimburse Plaintiffs for all  
11 privately funded educational expenses incurred from the date of  
12 Plaintiff L.M.'s third birthday (January 22, 2005) to the date of  
13 his next annual IEP. Plaintiffs argue they are entitled to  
14 reimbursement pursuant to 20 U.S.C. §1412(a)(10)(c), and that  
15 where, as here, the child has received "some educational benefit"  
16 from the private program, reimbursement is proper. Bd. of Trustees  
17 of Target Range School Dist., 960 F.2d 1486.

18           Defendant does not directly address the appropriateness of the  
19 requested relief. Rather, Defendant simply argues that the ALJ  
20 Decision is entitled to substantial weight, was properly decided,  
21 and thus should be upheld. Thus, as Plaintiffs point out,  
22 Defendant does not appear to dispute that Plaintiff L.M. received  
23 educational benefit from his placement in the ACES and CARD private  
24 in-home services.

25           The Court's review of the record supports the finding that the  
26 private in-home services from ACES and CARD were appropriate, under  
27 the circumstances. Defendant failed to provide Plaintiffs with a  
28 FAPE by failing to comply with the specified procedures for

1 preparing the IEP - i.e., by denying Plaintiffs the right to  
2 meaningfully participate in the IEP process. Plaintiff L.M.'s  
3 parents were entitled to services for Plaintiff L.M. until an IEP  
4 was prepared properly, and thus they are entitled to  
5 reimbursement.<sup>2</sup>

6 **V. CONCLUSION**

7 Based on the foregoing, and following the exercise of its  
8 independent judgment after fully reviewing the administrative  
9 record in this matter, the Court finds that the ALJ Decision is  
10 entitled to substantive deference. The Court further finds that  
11 the ALJ Decision is supported by a preponderance of the evidence,  
12 except that the Court finds that Plaintiffs were denied the right  
13 to meaningfully participate in the IEP process due to the time  
14 limitations placed on Dr. Lenington's evaluation at Palisades.

15 As a result of this procedural violation of the IDEA, the  
16 Court REVERSES IN PART the ALJ Decision, and REMANDS this matter to  
17 the California Office of Administrative Hearings, Special Education  
18 Division, to determine the appropriate amount of reimbursement due

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19  
20 <sup>2</sup> In their opening brief, Plaintiffs ask for reimbursement  
21 for all privately funded educational expenses incurred from the  
22 date of Plaintiff L.M.'s third birthday (January 22, 2005) to the  
23 date his next annual IEP was convened. However, in their reply  
24 brief, in addition to reimbursement, Plaintiffs states that "it  
25 should be determined that in order to receive meaningful  
26 educational benefit [Plaintiff L.M.] required an ABA therapy  
27 program of up to 40 hours per week, and, in addition, all related  
28 supervision from [CARD] as well as two to four hours per week of  
individual speech and language therapy provided by South County  
Speech and Language Pathologists." (Reply, 24:25-25:2). It is  
inappropriate for Plaintiffs to request additional relief in their  
reply. As a result, the Court will not consider the additional  
requested relief, and will only consider Plaintiffs' initial  
request - i.e. for reimbursement.

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1 to Plaintiffs for all privately funded educational expenses  
2 incurred between the date of Plaintiff L.M.'s third birthday  
3 (January 22, 2005) to the date of his next annual IEP.

4 **IT IS SO ORDERED.**

5

6 **DATED:**

March 13, 2007

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*Audrey B. Collins*

**AUDREY B. COLLINS  
UNITED STATES DISTRICT JUDGE**

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