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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

C.B., a minor, by and through his Guardian Ad Litem, Mike Blincoe,)	Case No. CV 06-08136 GAF (PJWx)
)	
Plaintiffs,)	
)	MEMORANDUM & ORDER
vs.)	REGARDING APPEAL OF
)	ADMINISTRATIVE DECISION
LONG BEACH UNIFIED SCHOOL)	
DISTRICT,)	
)	
Defendant.)	

**I.
INTRODUCTION**

C.B., a special education student in the Long Beach Unified School District (“LBUSD” or the “District”), seeks review of the decision of an Administrative Law Judge (“ALJ”) who denied his due process claim following a ten day hearing in early 2006. The ALJ concluded that the district had complied with its obligations under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (“IDEA”), and more particularly concluded:

- (1) that the district properly assessed him in all areas of suspected disability from June 2002 through then end of the 2005-06 school year;
- (2) that the district provided C.B. with a Free and Appropriate Public Education (“FAPE”) in the least restrictive environment during those years by adequately addressing C.B.’s lack of progress and implementing

1 appropriate Individualized Education Plans (“IEP”) designed to meet his
2 educational needs;
3 (3) that the district did not commit procedural violations in the
4 performance of its obligations under the IDEA, and in particular;
5 (4) that C.B.’s parents were not entitled to reimbursement for the costs
6 and expenses related to student’s participation in the private Lindamood-
7 Bell program.

8 (ALJ Decision at 35-36.)

9 C.B. disagrees with the ALJ’s conclusions, and seeks a determination that the
10 \$21,300 cost of the private Lindamood-Bell program should be reimbursed.

11 The ALJ’s findings and conclusions are thoroughly supported by the record,
12 which establishes that LBUSD identified C.B. as a student with learning disabilities no
13 later than his completion of two years of kindergarten. (Administrative Record (“AR”),
14 Exs. B through D.) While in first grade, he was assessed by a school psychologist at the
15 request of his parents and teacher because “it is suspected that he may have some
16 learning disabilities.” (*Id.*, Ex. D, at 1.) The psychologist concluded that the student
17 “meets the criteria as an individual with exceptional needs” and provided
18 recommendations for strategies to be used at home and in the school setting to address
19 his disabilities. (*Id.* at 5.) Shortly thereafter, LBUSD convened the first of its annual
20 IEP meetings which resulted in his initial IEP. (*Id.*, Ex. E.) Over the next decade,
21 LBUSD conducted meetings and developed annual IEP’s for C.B., all of which were
22 approved by C.B.’s mother. C.B.’s mother was usually, though not always, a
23 participant in these meetings. LBUSD regularly and thoroughly assessed C.B.’s
24 performance and established appropriate age and ability appropriate goals for the
25 coming school year. In short, the record fully supports the ALJ’s conclusion that the
26 IEPs developed for C.B. provided him with some educational benefit, and therefore a
27 FAPE, within the meaning of the IDEA. Board of Education v. Rowley, 458 U.S. 176,
28 203-04 (1982); J.L. v. Mercer Island Sch. Dist., No. 07-35716, 2010 WL 103678, *7-*8

1 (9th Cir. Jan. 13, 2010) (holding that re-enactment of IDEA did not alter Rowley's
2 "educational benefit" standard).

3 Accordingly, for these and other reasons discussed in greater detail below, the
4 decision of the ALJ is **AFFIRMED** and this case is **DISMISSED**.

5 **II.**

6 **FACTUAL BACKGROUND**

7 **A. C.B.'S EARLY EDUCATIONAL EXPERIENCE**

8 In LBUSD's initial March 13, 1998 IEP for C.B. (A.R., Ex. E.), the District
9 noted that C.B. displayed a "severe discrepancy between ability and achievement"
10 based on difficulties in "Reading." (Id. at E-1.) Accordingly, C.B. was to receive extra
11 reading-related educational attention through the District's Resource Specialist Program
12 ("RSP") for 30 minutes per day. (Id.) Progress goals were set in the areas of: 1) Basic
13 Reading/Decoding and 2) Basic Reading/Comprehension. (Id. at E-3.) C.B.'s mother
14 was a participant in creating the IEP and approved C.B.'s placement in RSP reading.
15 (Id. Ex. E-1.)

16 One year later, in March 1999, C.B.'s IEP team, including his mother,
17 reconvened to review C.B.'s progress. (Id., Ex. F, at F-10.) The team noted that
18 "attention and processing deficits continue to make for a relatively slow rate of
19 academic progress, yet there has been steady progress." (Id. at F-4.) The IEP report also
20 noted that C.B. had "met" each of the goals set forth in the 1998 IEP. Related
21 documents from earlier in March 1999 indicated that the District would "continue
22 programs in place," and stated (with C.B.'s mother's acknowledgment) that C.B. "has
23 made excellent progress!" (Id. at F-13.) New goals for reading and responding to text
24 were set for the forthcoming school year. (Id. at F-5, F-6.)

25 After C.B.'s 1999 IEP had been prepared, the District proceeded to complete
26 various education-related assessments for C.B. (Id. at F-11, Ex. I.) Reading and writing
27 tests were completed by C.B. in or about August, October, and December 1999. (Id.,
28 Ex. I at I-1, I-15, I-49, I-56.)

1 At the next IEP meeting, on March 31, 2000, C.B.'s mother and other District
2 participants convened to review his progress. (Id., Ex. J, at J-9.) The IEP records
3 indicate that C.B. had either "met" or "partially met" the two reading-related goals set
4 in 1999, and noted that C.B.'s "Current Baseline" involved "good literal comprehension
5 & adequate decoding skills in material at his level." (Id. at J-6.) C.B. would remain in
6 the "Resource Specialist Program" to continue working on properly "Responding to
7 Text." (Id. at J-6, J-9.)

8 By 2001, C.B. had completed three years in his special placement, and pursuant
9 to the California Education Code, the District conducted triennial assessments of his
10 progress in February and March of that year. (Id., Ex. K.) The assessments covered
11 both math and reading, and indicated that C.B. "has made good progress within the last
12 three years. He has been meeting his IEP goals in the areas of decoding,
13 comprehension, and attending....When comparing [C.B.'s] performance on the
14 Woodcock-Johnson Tests of Achievement three years ago and now, [C.B.] has made a
15 great gain in all academic areas....Although [C.B.] has made good progress in his
16 achievement, he continues to perform below his grade level...especially in the areas of
17 passage comprehension and spelling." (Id. at K-4.) Additionally, C.B.'s math
18 performance "was within the low average range." (Id. at K-3.) C.B. "continues to
19 require special education services." (Id. at K-4, K-5.)

20 Soon after the assessments were completed, C.B.'s IEP team—including his
21 mother—reconvened for another annual meeting on March 15, 2001. (Id., Ex. L, at L-
22 11.) The meeting's records reflect consideration of the then-recent "assessment...that
23 [C.B.] continues to require special educational services," but noted that C.B. was still
24 "progressing towards" his reading-comprehension goals. (Id., Ex. L, at L-2, L-4.)
25 C.B.'s parent comments indicated that "Parents are pleased with progress he has made
26 and would like him to remain in the Literacy classroom for 2001-2002 school year." (Id.
27 at L-2.) New comprehension and writing-related goals were set (Id. at L-5.), and C.B.'s
28 mother consented to his continued placement in RSP services. (Id. at L-11.)

1 When the IEP team reconvened in March 2002, C.B.’s mother was not present;
2 however, she had received advance notice of the meeting and consented to the IEP goals
3 and placements. (*Id.*, Ex. O, at O-1, O-15.) C.B.—by now in the fourth grade—had met
4 both of the 2001 IEP goals for reading and writing, specifically benchmarking “on a 4th
5 grade reading level” and writing in a “logical sequence.” (*Id.* at O-6.) New goals for
6 reading and writing were set (*Id.* at O-6.), and his RSP placement was continued, with
7 parental consent. (*Id.* at O-15.)

8 The 2003 IEP meeting was again conducted without C.B.’s mother present;
9 however, she was notified in advance and again consented to the IEP goals and
10 placements set forth in the meeting. (*Id.*, Ex. R, at R-15.) C.B. was determined to be
11 meeting or progressing towards his 2002 goals (*Id.* at R-5.), and new reading and
12 writing goals were established. (*Id.*) However, it was also determined that C.B. would
13 require additional help in mathematics, specifically “addition, subtraction,
14 multiplication, and division.” (*Id.* at R-7.) C.B. would accordingly spend greater time
15 in the RSP program, receiving language arts and math-related programming, and his
16 RSP schedule increased to encompass 29% of his time on campus. (*Id.* at R-8.)

17 **B. C.B.’S PARENTS CONCERN OVER THE RSP PROGRAMMING**

18 Up to this point in time, C.B.’s parents appear to have been satisfied with the
19 district’s response to his needs and with C.B.’s academic progress. However, by 2004,
20 the situation began to change as C.B. became more aware of and apparently self-
21 conscious about his circumstances. During that school year, C.B.’s mother expressed
22 concern about his RSP programming and its effect on C.B.’s overall educational
23 experience. (*Id.*, Ex. T, at T-1.) She sought to convene a supplemental IEP meeting in
24 January 2004 and “discuss special education support” for C.B., in part because she
25 found that C.B. “has been experiencing self esteem issues. Parent concerned about
26 getting services via pull-out classes and is interested in mainstreaming student.” (*Id.* at
27 T-1, T-2.) C.B.’s mother specifically stated she was “unhappy with teasing experienced
28 by” C.B. at the hands of other students. (*Id.*) It was concluded that C.B.’s RSP English

1 classes would be “changed to gen-ed. English and progress...monitored.” (Id. at T-3.)
2 C.B.’s RSP math programming would continue. (Id. at T-1.)

3 Two months later, on March 11, 2004, C.B.’s mother and the other IEP team
4 members met again to complete an annual IEP and determined that he “met” or was
5 “progressing towards” his 2003 language-arts goals and math goals, and set new goals
6 in these areas. (Id., Ex. U, at U-17, U-5; U-6.) In addition, the District prepared a
7 triennial assessment of C.B. on this same date. (Id. at U-18.) The triennial assessment
8 reflected that C.B. “has made steady progress since his last triennial.” (Id.) C.B.’s
9 mother stated at that time “that she is pleased with” C.B.’s progress, and C.B. himself
10 stated that “the support he receives at school is helping him.” (Id. at U-19.) Ultimately,
11 C.B. was to continue attending RSP math programming, and although the IEP team
12 “discussed placement in” a special day class so that C.B. “can receive more support and
13 services to meet his needs” the team was also “concerned about” C.B. “being happy
14 about school experience,” and did not change his placement. (Id. at U-12, U-17.)

15 **C. THE 2005 ASSESSMENTS AND THE RECOMMENDATION OF LINDAMOOD-BELL**
16 **SERVICES**

17 At the next annual IEP meeting in March 2005, attended by both C.B.’s mother
18 and her advocate, the prospect of Lindamood-Bell (“LMB”) services was first raised by
19 the IEP team. (Id. Ex. X, at X-9.) While C.B.’s math teacher stated that he “is doing
20 well academically,” the District specifically recommended that C.B.—now completing
21 the seventh grade—attend a summer LMB clinic on a daily basis to assist him in
22 making reading-related progress. (Id. at X-9.) Additional assessments of C.B.’s reading
23 skills were proposed and discussed, and it was noted that “parent will receive
24 assessment plan from psychologist.” (Id. at X-19.)

25 On May 20, 2005, school psychologist Dan Sullivan completed a
26 comprehensive assessment of C.B. at the IEP team’s request. The assessment report
27 sought to examine how C.B. was “progressing towards his IEP goals,” what C.B.’s
28 “current academic skills” were, and what “instructional practices” would best support

1 him. (Id. Ex. Y, at Y-1.) C.B. was assessed using a number of different methods,
2 including the Woodcock-Johnson Test of Achievement, the Matrix Analysis Test, the
3 Developmental Test of Visual Motor Integration, and the Test of Auditory Processing-
4 Upper Level. (Id.) The summary of the assessment reviewed the test results and
5 concluded that while C.B. “requires additional time to grasp new ideas and concepts
6 compared to his classmates,” he “is progressing toward meeting his academic goals.”
7 (Id. at Y-4.) It was “recommended that [C.B.] continue in the RSP Strategies for
8 Success Program at his school, with regular accountability for his work.” (Id. at Y-5.)

9 Additionally, on May 23, 2005, C.B. completed a number of reading-related
10 assessments consistent with the LMB plans and evaluations proposed at the March IEP
11 meeting. On the Gray Oral Reading Test 4, he tested at grade level 6.2 in reading rate,
12 6.7 in accuracy, 6.2 in fluency, and 4.4 in comprehension—all scores below his then-
13 current grade level. (Id., Ex. Y, at Y-12.) The instructional recommendations
14 accompanying the assessments stated that C.B. “would benefit from vocabulary
15 development and instructions in decoding multi-syllable words to bring his skills up to
16 his 8th grade level. Seeing Stars [the District LMB program]...offers these skills.” (Id.
17 at Y-12.)

18 When the IEP team reconvened in June 2005, C.B.’s mother, her advocate, and
19 other team members “discussed Lindamood Bell Clinic for summer” and concluded that
20 “based on results from assessment, clinic for summer is appropriate.” (Id., Ex. Z, at Z-
21 2.) The District subsequently sent C.B.’s parents notice, on June 6, 2005, that their son
22 would be “enrolled in a summer school reading program” to involve two sessions of
23 Lindamood-Bell services per day, between June 27 and July 29, 2005. (Id., Ex. 33.)

24 Less than a month thereafter, on June 29, 2005—while the scheduled LMB
25 programming was continuing—C.B.’s parents filed a due process hearing request,
26 alleging that C.B. had not been provided with a FAPE due to “deficits in comprehension
27 that have not been addressed and remediated.” (Id., Ex. A.)
28

1 Ultimately, both parties agree that C.B. attended the District-provided summer
2 2005 LMB program for approximately “a twenty-four day period” or “a few weeks.”
3 (Plaintiff’s Opening Brief at 17; Declaration of Debra K. Ferdman, Ex. 55)

4 **D. C.B.’S PARENTS ARRANGE FOR PRIVATE LINDAMOOD-BELL SERVICES**

5 After the summer program in 2005 and after the request for due process hearing
6 was filed, C.B.’s exposure to District-related LMB programming ceased. On July 27,
7 2005—two days before C.B. was scheduled to complete the District’s LMB
8 program—his mother arranged for him to receive testing for private LMB services in
9 Newport Beach, California. (Id., Ex. 19.) Additional tests regarding C.B.’s reading
10 capabilities were conducted (Id.), and C.B. received private LMB services throughout
11 fall 2005. (Id.)

12 On August 11, 2005, C.B.’s parents abruptly informed the District that: (1) it
13 had “failed to provide appropriate educational placement and services” to C.B.; (2) that
14 C.B. would “begin attending LMB on September 6, 2005 at the Lindamood-Bell Clinic
15 in Newport Beach” and (3) that they would “seek reimbursement from the District for
16 those services.” (Id., Ex. 25.) C.B.’s “six hours per day of intensive services” at the
17 private clinic caused him to be placed outside the District during this period of time;
18 therefore, additional District-provided evaluation and LMB services were not provided
19 in fall 2005. (Id.; see also ALJ Decision at 28.) Ultimately, C.B.’s parents paid more
20 than \$21,000 in tuition for these private services, funded by Sallie Mae educational
21 loans. (Id., Ex. AA, at AA-4.)

22 By letter dated September 20, 2005 (Id., Ex. 29.), the District responded to the
23 August letter and notified C.B.’s parents that it was “not willing to fund the costs of the
24 Newport Beach Lindamood-Bell clinic” because their “request for...reimbursement is
25 premature” and “the District has an appropriate Lindamood-Bell program” to meet
26 C.B.’s “educational needs.” (Id.) The District did, however, explicitly offer C.B. “a
27 double block of Lindamood services...during the 2005-2006 school year” and “two
28 hours per week of additional tutoring after school by trained District staff.” (Id.)

1 Ultimately, however, C.B. did not reenter the District’s classes in fall 2005. (Id., Ex.
2 DD.)

3 The due process hearing, and this lawsuit, followed.

4 **III.**

5 **DISCUSSION**

6 As detailed above, C.B.’s parents now seek reimbursement from the District for
7 the fall 2005 private LMB services he received.

8 **A. LEGAL FRAMEWORK**

9 A child with a disability has the right to a Free and Appropriate Public
10 Education (“FAPE”) under the Individuals with Disabilities Education Act and
11 California law. 20 U.S.C. § 1412(a)(1)(A); CAL. EDUC. CODE § 56000. The
12 Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”), effective
13 July 1, 2005, amended and reauthorized the IDEA. The California Education Code was
14 amended, effective October 7, 2005, in response to the IDEIA.

15 A school’s failure to conduct appropriate assessments or to assess a student in
16 all areas of suspected disability may constitute a procedural denial of a FAPE. Park v.
17 Anaheim Union High Sch. Dist., 464 F.3d 1025, 1031-33 (9th Cir. 2006). A procedural
18 violation amounts to a denial of a FAPE if the violation (1) impeded the child’s right to
19 a FAPE, (2) significantly impeded the parents’ opportunity to participate in the decision
20 making process regarding the provision of a FAPE, or (3) caused a deprivation of
21 educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); CAL. EDUC. CODE § 56505(f)(2).

22 The Supreme Court has held that “the ‘basic floor of opportunity’ provided by
23 the IDEA consists of access to specialized instruction and related services which are
24 individually designed to provide educational benefit to” a child with special needs. Bd.
25 of Educ. v. Rowley, 458 U.S. 176, 201 (1982). Rowley expressly rejected an
26 interpretation of the IDEA that would require a school district to “maximize the
27 potential” of each special needs child “commensurate with the opportunity provided” to
28 typically developing peers. Id. at 200. Instead, the FAPE requirement is met when the

1 child receives access to an education that is “sufficient to confer some educational
2 benefit” upon the child. Id. at 200, 203-04.

3 The Supreme Court established a two-part test to determine whether a state has
4 provided a FAPE. Id. at 206-07. “First, has the State complied with the procedures set
5 forth in the [IDEA]? And second, is the individualized educational program developed
6 through the [IDEA]’s procedures reasonably calculated to enable the child to receive
7 educational benefits?” (Id. (footnotes omitted).) “If these requirements are met, the
8 State has complied with the obligations imposed by Congress and the courts can require
9 no more.” Id. at 207; see also Ojai Unified Sch. Dist. v. Jackson, 4 F.2d 1467 (9th Cir.
10 1993); J.L., 2010 WL 103678, at *8.

11 **B. STANDARD OF REVIEW**

12 When a party challenges the outcome of an IDEA due process hearing, the
13 reviewing court receives the administrative record, hears any additional evidence, and
14 “basing its decision on the preponderance of the evidence, shall grant such relief as the
15 court determines is appropriate.” R.B., ex. rel. F.B. v. Napa Valley Unified Sch. Dist.,
16 496 F.3d 932, 937 (9th Cir. 2007); 20 U.S.C. § 1415(i)(2) (2003). The Ninth Circuit
17 has stated that “the district court may review the ALJ’s findings and make its own
18 factual determinations, after granting the ALJ’s findings ‘due weight,’ on a
19 preponderance of the evidence.” Ms. S. ex rel. G. v. Vashon Island Sch. Dist., 337 F.3d
20 1115, 1127 (9th Cir. 2003). “The court, in recognition of the expertise of the
21 administrative agency, must consider the findings carefully and endeavor to respond to
22 the hearing officer’s resolution of each material issue. After such consideration, the
23 court is free to accept or reject the findings in part or in whole.” Gregory K. v.
24 Longview Sch. Dist., 811 F.2d 1307, 1311 (9th Cir. 1987). Deference is given to the
25 findings of the administrative law judge where those findings are both “thorough and
26 careful.” Union Sch. Dist. v. Smith, 15 F. 3d 1519, 1524 (9th Cir. 1994). The hearing
27 officer’s findings are considered “thorough and careful” when the hearing officer
28 participates in the questioning of witnesses and writes a decision “contain[ing] a

1 complete factual background as well as a discrete analysis supporting the ultimate
2 conclusions.” R.B., 496 F.3d at 942 (quoting Park v. Anaheim Union High Sch. Dist.,
3 464 F.3d 1025, 1031 (9th Cir. 2006)).

4 **C. APPLICATION**

5 In this case, the Court reviews a 36-page ALJ decision that incorporates
6 numerous clear and detailed findings of fact and conclusions. The opinion demonstrates
7 experience with educational theory, a clear understanding of the various testing
8 instruments and methods used in assessing a student’s needs, and a particularly clear
9 understanding of such terms of art as “attention,” “conceptualization,” and
10 “association.” (ALJ Decision at 3.) In addition, the opinion includes extensive
11 discussion of the IDEA’s governing law, and includes a thorough consideration of the
12 issues presented by C.B.

13 The Court in particular notes that, in her final factual finding, the ALJ made
14 certain direct observations regarding the course of conduct between C.B.’s parents and
15 the District. In particular, the ALJ found that by 2005, “Student had been receiving
16 special education services for years,” and that C.B.’s mother knew “she could request
17 modifications and/or withdraw consent as she did on numerous occasions, and could
18 call an IEP meeting at any time to voice her concerns, which she did in January 2004.
19 Mother also consented to the programs and services offered annually without question
20 or comment.” (ALJ Decision at 21.) The Court proceeds to address the record and the
21 ALJ’s conclusions with these considerations in mind.

22 **1. DID THE DISTRICT APPROPRIATELY ASSESS C.B. IN ALL AREAS OF** 23 **SUSPECTED DISABILITY FOR THE SCHOOL YEARS COMMENCING JUNE** 24 **2002/2003 THROUGH 2005/2006?**

25 This Court’s review of the sequence of IEP meetings, District-parent
26 communications, and educational programming offered to C.B. amply supports the
27 ALJ’s conclusion that “Student was assessed in all areas of suspected disability from
28 June 2002 through the 2005/2006 school years, as set forth in the 2001 and 2004

1 triennial evaluations, the 2005 assessment, and the District’s 2005 LMB testing.” (ALJ
2 Decision at 6.)

3 As the ALJ decision and the record indicate, C.B.’s math and language arts
4 difficulties were assessed in 2001 using the Woodcock-Johnson III test of achievement.
5 (A.R., Ex. K, at K-2, K-3, K-5.) Between 2001 and 2004, multiple IEP team meetings
6 were conducted and his progress was reviewed; it was then decided—with parental
7 involvement and/or consent—to provide C.B. with language-arts and (later) math RSP
8 programming. Although the 2004 triennial evaluation did not include standardized
9 testing, as the Court explains below, the District was not required to conduct further
10 testing at that time. In 2005, additional assessments of C.B. were conducted pursuant to
11 the team’s request, including evaluations aimed at assessing C.B.’s LMB eligibility.
12 Although in May 2005, the IEP team discussed plans for further evaluation of C.B.’s
13 summer LMB results (see A.R., Ex. Z, at Z-2.), by fall 2005, C.B. was no longer placed
14 in the District and instead was attending private LMB sessions.

15 Because the record establishes that C.B. was appropriately assessed during the
16 time period in question, the Court **AFFIRMS** the ALJ’s decision regarding this issue.

17 **2. DID THE DISTRICT DENY STUDENT A FREE APPROPRIATE PUBLIC**
18 **EDUCATION FOR THE SCHOOL YEARS COMMENCING JUNE 2002/2003**
19 **THROUGH 2005/2006 BY FAILING TO ADDRESS STUDENT’S LACK OF**
20 **PROGRESS AND TO SUGGEST CHANGES TO HIS IEP’S TO MEET HIS NEEDS?**

21 On the issue of the District’s alleged failure to address C.B.’s lack of progress,
22 the Court will review and consider the specific points in the record where C.B.’s
23 progress was addressed and changes were suggested.

24 According to the record, C.B.’s mother did not even attend the first IEP meeting
25 during the relevant period, which was held in March 2002. At that meeting, the
26 members of the team concluded that C.B. had met his previous annual goals in reading
27 and written language (areas where C.B. had previously been identified as performing
28 below grade level). Thus, rather than finding that C.B. was making a “lack of

1 progress,” the team found he was actually making progress under the District’s selected
2 programming—and indeed, C.B.’s parents had informed the District at the previous
3 annual IEP meeting that they were pleased with his progress under District
4 programming. (A.R. at L-2.) After the 2002 meeting, C.B.’s mother gave her consent to
5 the IEP’s goals, objectives, and proposed placement in RSP reading and written
6 language programming. (Id. at O-15.) Thus, as to this meeting, the Court agrees with the
7 ALJ that the “fact that Mother approved the March 2002 IEP is...evidence she
8 considered the goals and objectives contained therein to be appropriate to meet the
9 needs of her child at the time.” (ALJ Decision at 24.)

10 At the next IEP meeting in March 2003, C.B.’s mother was again absent, and
11 the IEP team again concluded that C.B. was meeting his annual reading and writing-
12 related goals, or at least progressing towards them. (A.R.at R-5.) While new goals and
13 objectives in these areas were established, the team also noted that C.B.’s progress in
14 mathematics was insufficient, and recommended additional RSP math programming.
15 (Id. at R-7, R-8.) The record therefore demonstrates that: C.B. was continuing to make
16 progress in District RSP programming; that the IEP team noted areas where C.B.
17 needed additional support; that the team proposed math-supportive changes to his
18 academic program in the IEP; and that C.B.’s mother agreed to these changes. (Id. at R-
19 15.) Again, the facts in evidence do not persuade the Court that the District failed to
20 suggest IEP changes to meet C.B.’s needs.

21 In early 2004, C.B.’s mother herself requested that an IEP meeting be conducted
22 to assess C.B.’s continued RSP placement. The IEP team noted C.B.’s mother’s
23 concerns that RSP programming was producing “teasing,” and made changes in his
24 programming to permit more mainstream class time. (Id. at Ex. T.) Once again, C.B.’s
25 needs were considered by the IEP team and changes to the IEP were suggested and
26 implemented accordingly.

27 At the March 2004 IEP meeting, it was again determined that C.B. “met” or was
28 “progressing towards” his 2003 language-arts goals and math goals. The District’s

1 2004 triennial assessment similarly reflected that C.B. “has made steady progress since
2 his last triennial,” and included positive statements from himself and his mother
3 regarding his scholastic progress. (A.R. at U-18, U-19.) (Id. at U-19.) As referenced
4 above, the team “discussed placement in” a special day class so that C.B. could receive
5 additional support, but his placement was not changed because the team was “concerned
6 about” C.B. “being happy about [his] school experience.” (Id. at U-12, U-17.) C.B.’s
7 needs and progress were considered and addressed, his mother was included at the
8 meeting, and she consented to the plans and goals for the following year. (Id. at U-17.)

9 At the March 2005 IEP meeting, discussed in detail above, the IEP team decided
10 to arrange for assessments of C.B. and later make additional determinations regarding
11 LMB summer services. The assessments were then conducted and in June 2005, the
12 team—with C.B.’s mother’s consent—arranged for him to attend the summer LMB
13 program. (Id. at Z-7.) A comparison of C.B.’s scores prior to the District’s LMB
14 program and his scores on private LMB tests administered in late July 2005 indicates
15 that he made considerable progress during the summer 2005 District programming.
16 Specifically, and as the ALJ noted, C.B.’s reading comprehension and decoding scores
17 on the Gray Oral Reading Test improved from 4.4 in May 2005 to 5.0 in July 2005 (see
18 Ex. 19 at 2; compare Ex. Y at Y-12.); his accuracy improved from 6.7 to 7.2 in the same
19 period (Id.); and his fluency improved from 6.2 to 6.7 during that time. (Id.) Thus, the
20 record reflects that C.B. improved half a grade level in multiple reading areas after
21 spending less than a month in the District’s LMB summer program. C.B.’s enrollment
22 in this program was obviously aimed at addressing and advancing his progress in
23 reading, and it had measurable, positive effects in a relatively short period of time.

24 In sum, the record amply supports the conclusion that the process of annual
25 IEP’s and changes to C.B.’s programming conferred “some educational benefit” on him,
26 and therefore, under Rowley, the District has met the FAPE requirement. 458 U.S. at
27 203-04. C.B.’s parents were involved in this process, contributed their own views
28 regarding changes to his RSP programming, and ultimately consented to his placement

1 in the District's summer LMB program, based on the discussions and plans laid out in
2 the IEP process. The Court therefore **AFFIRMS** the ALJ's decision and concludes that
3 the District did not deny C.B. a FAPE during the relevant time period.

4 **3. DID THE DISTRICT COMMIT PROCEDURAL VIOLATIONS OF THE IDEA BY**
5 **(A) FAILING TO CONDUCT STANDARDIZED TESTING AT THE TRIENNIAL**
6 **REASSESSMENT IN 2004; (B) FAILING TO PROVIDE PARENTS WITH PRIOR**
7 **WRITTEN NOTICE AT THE END OF THE 2004/2005 SCHOOL YEAR TO ADDRESS**
8 **THEIR REQUEST FOR A LINDAMOOD-BELL LEARNING PROCESSES PROGRAM;**
9 **OR (C) FAILING TO IDENTIFY STUDENT'S PRESENT LEVELS AND REVIEW HIS**
10 **ANNUAL GOALS AT THE MARCH 2005 ANNUAL IEP?**

11 A. 2004 Triennial Reassessment

12 The record reflects that additional standardized testing was not conducted at the
13 time of C.B.'s 2004 triennial reassessment; however, the Court agrees with the ALJ's
14 conclusion that there "is no requirement in the IDEA that a reassessment must mimic
15 the depth and breadth of an initial assessment." (ALJ Decision at 30.) Plaintiff's
16 assertion that the triennial "evaluation should have included standardized testing"
17 (Opening Brief at 10.) is not supported by any authority. Rather, the Court is persuaded
18 that "assuming" that a school district "already ha[s] the information it need[s] to
19 establish" a student's educational needs, standardized testing is not procedurally
20 required under the IDEA. Robert B. ex rel. Bruce B. v. West Chester Area Sch. Dist.,
21 2005 WL 2396968, *5 (E.D.Pa. 2005). C.B.'s past assessment in 2001 had included
22 testing in both language arts and math, which revealed that he struggled in those areas;
23 the IEP meetings after that time did not reveal any other areas in which C.B. would
24 require testing beyond the scope of the previous assessment. The Court also notes that
25 C.B.'s mother was involved in the reassessment process, and she knew of her right to
26 request further District action if she perceived that the District was not acting in C.B.'s
27 interest; she had even exercised that right earlier in 2004. Yet C.B.'s mother made no
28 objections or requests for further action at the time of the 2004 triennial, and it was not

1 until June 2005 that she claimed IDEA violations.

2 In sum, the Court concludes that the District's decision not to conduct
3 standardized testing during the course of the 2004 triennial was not a procedural
4 violation of the IDEA, and the ALJ's determination regarding this issue is

5 **AFFIRMED.**

6 B. Prior Written Notice Regarding Lindamood-Bell Program

7 A second sub-issue before the ALJ concerned the District's alleged failure to
8 provide prior written notice regarding C.B.'s parents' request for a LMB "Learning
9 Processes" program. (ALJ Decision at 31.) More specifically, the ALJ considered
10 whether "the District failed to timely respond" (Id.) to the parents' August 11, 2005
11 letter, wherein they alleged that "the District has failed to provide appropriate
12 educational placement and services" to C.B., and stated that they had "decided to
13 provide him with those services" themselves, through private LMB programs. (A.R. at
14 Ex. 25.)

15 The Court's review of the parents' letter indicates that—as the ALJ
16 determined—the correspondence was essentially a "unilateral statement of what [the
17 parents] were going to do" than a request for District LMB services in fall 2005. (ALJ
18 Decision at 32.) Nonetheless, to the extent the letter constituted a Learning Processes
19 program request, the District's September 2005 letter addressed the parent's request,
20 consistent with the language in 20 U.S.C. §§ 1415(c) (requiring, inter alia, "a
21 description of the action...refused," an "explanation" for the decision, and a "description
22 of other options considered"). The District specifically informed C.B.'s parents that it
23 was "not willing to fund the costs of the Newport Beach Lindamood-Bell clinic"
24 because the parents' "request for...reimbursement is premature" and "the District has an
25 appropriate Lindamood-Bell program" to meet C.B.'s "educational needs." (A.R. at Ex.
26 29.) Thus, the Court cannot conclude that the District failed to properly respond to the
27 parents' request for services, and the ALJ's decision is **AFFIRMED.**

28

1 C. March 2005 Annual IEP

2 C.B.'s third contention regarding an IDEA procedural violation turns on the
3 claim that the District failed to identify his present levels and review his annual goals at
4 the March 2005 IEP meeting.

5 The evidence clearly indicates that at the March 2005 IEP meeting, C.B.'s
6 present levels in mathematics were considered and discussed (Id. at X-6.) and math-
7 related programming was then recommended. (Id. at X-9.) The IEP meeting was then
8 adjourned to permit additional assessments of C.B., as the team and C.B.'s mother
9 found appropriate. Once such additional assessments were completed (Id., Ex. Y.), the
10 IEP reconvened in June and the "team discussed Lindamood Bell Clinic for summer,"
11 concluding that C.B. should "be programmed into Lindamood Bell reading class
12 and...summer results" would then yield an additional review of C.B.'s status in fall
13 2005. (Id. at Z-2.) C.B. ultimately did not reenter the District's classes in fall 2005, and
14 in December 2005, an IEP addendum was executed; the team, including C.B.'s mother,
15 determined that C.B. would receive future programming through an Independent Study
16 Program. (Id. at Ex. DD.)

17 Thus, it is clear that all interested parties—including C.B.'s mother and
18 advocate—reviewed C.B.'s goals and present levels during the 2005 IEP process;
19 indeed, the May 2005 assessments and resultant June 2005 recommendation of LMB
20 programming resulted from this identification and review process. The District did not
21 fail to identify C.B.'s present levels and annual goals in March 2005; instead, a
22 procedure for identifying these levels and addressing future goals—including potential
23 LMB programming in summer and fall—was established. The ALJ's determination
24 regarding alleged failures at the March 2005 IEP is **AFFIRMED**.

25 D. CONCLUSION

26 Consistent with the above discussion, the Court concludes that as to procedural
27 violations of the IDEA, the District "has complied with the obligations imposed by
28 Congress" and this Court "can require no more." Rowley, 458 U.S. at 207.

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4. ARE STUDENT’S PARENTS ENTITLED TO REIMBURSEMENT FOR EXPENSES AND TRANSPORTATION COSTS FOR THE PRIVATE LINDAMOOD-BELL PROGRAM?

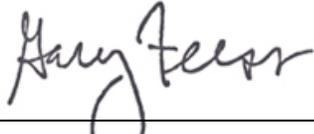
As the ALJ noted, the trigger for eligibility for reimbursement of private placement tuition is the denial of a FAPE. (ALJ Decision at 34 (citing Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993).)) Because the Court has concluded in detail above that, based on the record, C.B. was not denied a FAPE, C.B.’s parents are not eligible for reimbursement of the private LMB tuition and costs. Therefore, the ALJ’s conclusion regarding this final issue is **AFFIRMED**.

**IV.
CONCLUSION**

For the foregoing reasons, the Court concludes that the ALJ’s decision regarding all four issues in this matter is **AFFIRMED** and this case is **DISMISSED**.

IT IS SO ORDERED.

DATED: January 15, 2010



Judge Gary Allen Feess
United States District Court