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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

JULIE WALHOVD, Plaintiff, vs. BELLFLOWER UNIFIED SCHOOL DISTRICT, Defendant.	**Case No. CV 08-00394 GAF (CWx)** MEMORANDUM AND ORDER REGARDING APPEAL OF ADMINISTRATIVE DECISION

I. INTRODUCTION & STATEMENT OF ISSUES

Plaintiff Julie Walhovd (referenced as "Plaintiff"), a special needs student who attended high school in the Bellflower Unified School District ("BUSD") from 2003 to 2006, commenced a due process hearing in April 2005 shortly after her suspension for setting a fire at the high school. Some of the issues raised were designated as "expedited" and were ultimately resolved through a settlement agreement. The due process hearing as to the remaining issues was continued several times, and eventually a second complaint was filed in February 2007. The two cases were consolidated and the hearing was conducted over several days in April and May 2007. In these proceedings, Plaintiff asserted that the school district denied her a Free and Appropriate Public Education ("FAPE") both substantively and procedurally. Substantively, Plaintiff asserted that she had been denied appropriate services and goals in her areas of need from 2002 to 2005, that her Individualized Education Program ("IEP") had not been

properly implemented in 2002 and 2004, and that she was not placed in the least restrictive environment in the 2005-2006 school year. Procedurally, she argued that she was not properly assessed in all areas of suspected disability from 2001 through 2006, that her progress on her annual goals was not adequately documented in 2004-2005 and 2005-2006, and that she was not provided with an appropriate transition plan at any time during her high school career. She also sought reimbursement for an Independent Educational Evaluation ("IEE") and compensatory education.

After several days of testimony and extensive briefing by the parties, the Administrative Law Judge ("ALJ") rendered a lengthy and detailed written ruling on the claims. The ALJ found in favor of Plaintiff on two issues: (1) the district was ordered to reimburse the cost of the IEE; and (2) the district was ordered to offer Plaintiff an age appropriate privately funded vocational assessment for use in her current educational setting, including ten (10) hours of one-on-one tutoring addressing the means of pursuing vocational and educational opportunities. (ALJ Decision ¶¶ 126, 129.) The ALJ found in favor of BUSD on all other issues. (Id. at 43-44.) Specifically, the ALJ found, among other things, that the school district had properly assessed Plaintiff during all relevant school years, had appropriately documented her progress, had provided her with appropriate transition plans in 2003-2004, had provided appropriate services and goals for school years from 2002 through 2006, and had properly placed her in the least restrictive environment in 2005-2006. (Id.) In a separate ruling, the administrative law judge refused to allow Plaintiff to attempt to prove that BUSD improperly removed Plaintiff from her educational placement for ten school days in April 2005 in violation of state and federal procedural requirements, finding that Plaintiff had waived the right to raise the issue because of an operative settlement agreement. (Compl. ¶¶ 44-46.)

Plaintiff initiated the present action under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(i)(2)(A), seeking review of the ALJ's decision. BUSD counterclaimed challenging those portions of the ALJ's decision

favorable to Plaintiff. During the course of this litigation, the issues were narrowed to the following:

Issue 1: While Plaintiff was a student in BUSD, did BUSD provide Plaintiff with sufficient assessments and services with respect to Plaintiff's reading comprehension ability to allow her to function at an appropriate level and to prepare for independence in her post-high school life?

Issue 2: Did the ALJ correctly determine that BUSD failed to provide adequate transition services during the 2004-2005 and 2005-2006 school years?

Issue 3: Did the ALJ correctly determine that the April 27, 2005 Interim Settlement Agreement resolved the issue of compensatory education?

Issue 4: Did the ALJ properly order BUSD to reimburse Plaintiff for the cost of a Lindamood-Bell Independent Educational Evaluation?

Issue 5: Did the ALJ properly order BUSD to provide Plaintiff with a vocational assessment and ten hours of one-on-one tutoring?

In the Court's view, the most significant aspect of the dispute, which is encompassed by Issue 1, arises primarily out of Plaintiff's dissatisfaction with the assessment of her reading level at the outset of her senior year when she moved to Wisconsin where she finished her high school education. Plaintiff essentially claims that her low scores demonstrate that BUSD could not have properly assessed her or provided her with appropriate educational opportunities. However, the record demonstrates otherwise. Plaintiff was tested, assessed, evaluated and re-evaluated during the relevant time period. The IEP team, with the participation of Plaintiff's mother, met regularly to review the test results, her classroom performance, and overall progress. Moreover, when her mother requested an independent evaluation of specific abilities, the request was honored. Despite BUSD's sustained efforts over a period of many years, Plaintiff, in part due to emotional and psychological factors identified in the assessment process, performed inconsistently in the classroom – at times her grades were quite good (over a 3.0 GPA) when she focused on the task at hand and applied

herself to the work. At other times, she performed quite poorly and lost privileges, including participation on the school swimming team, until she brought her grades up. All of these factors were thoroughly considered and discussed by the ALJ, whose findings and conclusions are affirmed as to all issues except Issue 3. On that issue, the Court concludes that the ALJ erred in determining that the issue of compensatory education had been designated by the parties as "expedited" in April 2005, and that the Interim Settlement agreement resolved only the expedited issues. Accordingly, on that issue the case must be remanded for further proceedings.

II. DISCUSSION

A. LEGAL FRAMEWORK

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

A school district must assess the student in all areas of suspected disability to develop a special education program that will address the student's unique needs resulting from his or her disability. (ALJ Decision ¶ 4.) A school's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (Park v. Anaheim Union High Sch. Dist., 464 F.3d 1025, 1031-33 (9th Cir. 2006).) A procedural violation amounts to a denial of a FAPE if the violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); CAL. EDUC. CODE § 56505(f)(2).) Equitable remedies such as compensatory education may be considered when fashioning relief for violations of the

IDEA. (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 16 (1993); Parents of Student W. v. Puyallup Sch. Dist. No. 3, 31 F.3d 1489, 1496 (9th Cir. 1994).)

The Supreme Court has held that "the 'basic floor of opportunity' provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. (Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., et al. v. Rowley, 458 U.S. 176, 201 (1982).) Rowley expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (Id. at 200.) Instead, the FAPE requirement is met when the child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (Id. at 200, 203-04.)

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

B. STANDARD OF REVIEW

When a party challenges the outcome of an IDEA due process hearing, the reviewing court receives the administrative record, hears any additional evidence, and "basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." (R.B., ex. rel. F.B. v. Napa Valley Unified Sch. Dist., 496 F.3d 932, 937 (9th Cir. 2007); 20 U.S.C. § 1415(i)(2) (2003).) The Ninth Circuit has stated that "the district court may review the ALJ's findings and make its own factual determinations, after granting the ALJ's findings 'due weight,' on a

preponderance of the evidence." (Ms. S. ex rel. G. v. Vashon Island Sch. Dist., 337 F.3d 1115, 1127 (9th Cir. 2003).) "The court, in recognition of the expertise of the administrative agency, must consider the findings carefully and endeavor to respond to the hearing officer's resolution of each material issue. After such consideration, the court is free to accept or reject the findings in part or in whole." (Gregory K. V. Longview Sch. Dist., 811 F.2d 1307, 1311 (9th Cir. 1987).) Deference is given to the findings of the administrative law judge where those findings are both "thorough and careful." (Union Sch. Dist. v. Smith, 15 F. 3d 1519, 1524 (9th Cir. 1994).) The hearing officer's findings are considered "thorough and careful" when the hearing officer participates in the questioning of witnesses and writes a decision "contain[ing] a complete factual background as well as a discrete analysis supporting the ultimate conclusions." (R.B., 496 F.3d at 942 (quoting Park v. Anaheim Union High Sch. Dist., 464 F.3d 1025, 1031 (9th Cir. 2006)).)

C. APPLICATION

In this case, the Court is presented with an impressive ruling by the ALJ, whose findings and conclusions reflect a clear understanding of the applicable law under the IDEA and notable competence in the substantive areas of educational theory and psychology. The ALJ authored a detailed forty-four page opinion, setting forth her findings of fact and conclusions of law, which were supported by extensive documentation. The decision discussed the evidence presented and analyzed the evidence within the legal framework set forth in the decision. The findings ultimately reflect the author's fluency in the language and concepts of special education. The Court proceeds to address the ALJ's findings and conclusions with these considerations in mind.

1. WHETHER BUSD PROVIDED PLAINTIFF WITH SUFFICIENT ASSESSMENTS AND SERVICES WITH RESPECT TO PLAINTIFF'S READING COMPREHENSION

ABILITY TO ALLOW HER TO FUNCTION AT AN APPROPRIATE LEVEL AND TO PREPARE FOR INDEPENDENCE IN HER POST-HIGH SCHOOL LIFE

Plaintiff argues that BUSD failed to conduct assessments in reading comprehension throughout Plaintiff's time in the school district, which resulted in Plaintiff's inability to make meaningful educational progress under the IDEA. Plaintiff seeks to show that she lacks basic reading skills to allow her to function independently in post-secondary life. Plaintiff asserts that no high school assessment of her reading skills was made until her tenth grade year (2005), when she failed the language arts portion of the California High School Exit Exam ("CAHSEE") and was assessed at a 5.1 grade level.

BUSD argues that the school district properly and repeatedly assessed Plaintiff's reading comprehension ability and provided meaningful educational services to meet her needs. BUSD points to the evidence in the record in support of its contention, and asserts that, under the Rowley standard, it provided significant educational benefits to Plaintiff. In findings thoroughly supported by the record, the ALJ agreed with BUSD's contention.

a. 2001-2003

The ALJ noted that Plaintiff was repeatedly assessed throughout her time in the school district, both by BUSD employees and third parties. From 2001-2002, Plaintiff received an initial assessment that revealed Plaintiff's processing disorders in auditory memory and attention. (ALJ Decision ¶ 7.) In addition, Plaintiff's reading comprehension skills were assessed as well. (ALJ Decision, Ex. I-26.) In the 2002-2003 school year, Richard Walker ("Walker"), a Speech and Language Pathologist ("SLP"), conducted a triennial assessment of Plaintiff's speech and language capabilities, during which he administered the Secord Contextual Probes of Articulation Competence and concluded that her deficits were mild. (ALJ Decision ¶ 13.) His conclusion was buttressed by the results of the Adolescent Test of Problem Solving

(ATOPS), which measures critical thinking and gives and indication of the existence (or not) of deficits in processing and language skills. (Id.) Plaintiff performed well on that test. (Id.) Even so, Plaintiff's mother disputed the assessment and requested and received an IEE performed by Newport Language and Speech Centers. (Id. ¶¶ 13-14.) Newport conducted three days of testing and recommended two hours of individual speech and language services per week, but no reading services. (Id. ¶ 14.) That evaluation was taken into account in additional assessment work performed by BUSD SLP Cindy Stevens ("Stevens"). (Id. ¶ 15.) Stevens recommended additional speech and language services to be provided in a regular classroom environment. (Id.) In short, Plaintiff was thoroughly assessed and appropriate services were provided based on those assessments, and she managed to finish the year with a 3.17 grade point average. (Pl.'s Ex. GG.)

b. The 2003-2004 School Year

In the 2003-2004 school year, Walker, though not required to do so, conducted an additional speech and language assessment of Plaintiff. (Pl.'s Ex. II.) Based on his observations of the tests—which focused on articulation—Walker nevertheless observed that Plaintiff showed no signs of having any difficulty responding to his instructions or in understanding what she was reading. (ALJ Decision ¶ 18.) These assessments were based on more than testing, since Walker had provided speech and language therapy to Plaintiff for a number of years. Moreover, his conclusions were consistent with prior assessments reported in the prior year's report from Stevens relating to auditory processing and comprehension, and Plaintiff's mother had not suggested that Plaintiff needed any additional assessments during that school year. (Id. ¶¶ 18-19.) By year end, Plaintiff had raised her grade point average to 3.66, and no teachers reported any indication that Plaintiff required further assessments or services relating to reading comprehension. (Id. ¶ 19.)

c. The 2004-2005 School Year

During this school year, Plaintiff received her triennial psychoeducational reassessment, which included a detailed review of school records, information and observations from parents, teachers and other service providers, and the administration of a battery of tests. (Id. ¶ 26.) Although the testing included the Wechsler Abbreviated Scale of Intelligence (WASI) instrument, its use was proper in the circumstances since the full Wechsler had been given and the WASI corroborated the earlier scores. (Id. ¶ 27.) Similarly, portions of the TAPS-UL-R were given to assess certain auditory processing skills; those areas not tested by TAPS were tested through other testing instruments utilized by the examiner. (Id. ¶¶ 31-32.) The Court notes that at least six different tests were administered for the purpose of evaluating Plaintiff's educational level, her performance in various cognitive areas, and her processing skills.[1] In addition, Plaintiff's therapist completed the Burks Behavior Rating Scales, which assessed the students emotional state, her social interactions, and any psycho-social factors that might bear on her educational performance and progress. (Id. ¶ 38.) A number of significant problems were identified—poor impulse control, poor attention, excessive resistance and aggressiveness, poor social conformity, and excessive sense of persecution—none of which had yet manifested themselves in the school environment.[2] (Id.) Avalos also presented these results in January 2005 at Plaintiff's IEP meeting. (Id. ¶ 39.) The ALJ concluded, and the Court agrees, that the extensive testing conduct in 2005 satisfied the district's obligation to conduct an appropriate reassessment of Plaintiff's educational performance and needs. (See id. ¶ 44.)

d. The 2005-2006 School Year

[1]The ALJ noted that speech and language assessments were not provided because Plaintiff had received a full reassessment just two years earlier (see above), and because no significant changes had been observed over that period of time.

[2]Just a few months later, these conditions manifested themselves in extremely negative behavior when Plaintiff "caused a fire" on school property.

Although, as noted by the ALJ, BUSD was required only to conduct assessments and reassessments every three years, BUSD administered another assessment in January 2006 at the request of Plaintiff's mother, who asked for a measurement of Plaintiff's "nonverbal intelligence." (Id. ¶ 47.) Accordingly, BUSD directed that testing be conducted to evaluate Plaintiff in the areas of cognitive ability and nonverbal intelligence. (Id.) Two different tests were administered and the results were compared with past cognitive scores achieved on four other previously administered tests. (Id.) Plaintiff scored in a range similar to that achieved on prior tests. (Id.) In addition, the school district noted Plaintiff's increasing stress levels and behavioral problems during the year and obtained a mental health assessment of Plaintiff because her behavior was interfering with her educational progress. (Id. ¶ 52.) BUSD received a detailed report containing a diagnosis and proposal that mental health treatment be provided to allow Plaintiff to benefit from the special education programming being provided to her. (Id. ¶ 53.)

The Court also notes that, in 2006, Plaintiff's mother obtained an independent assessment from Lindamood-Bell in Newport Beach, California. (Id. ¶ 49.) Representatives of Lindamood-Bell testified at the due process hearing and explained that fourteen different tests were administered with widely differing results—on nine tests she tested at high school level; on five tests she tested "well below average." (Id. ¶ 50.) As the ALJ noted, the Lindamood-Bell representative's testimony was informative "but provided no information regarding the appropriateness of the District's assessments." (Id. ¶ 51.)

e. The ALJ's Conclusion

As the ALJ noted, Plaintiff's mother believed that the district did not properly evaluate its own assessments and those obtained from independent examiners which she believed demonstrated the presence of auditory processing deficits that impaired Plaintiff's reading comprehension. (Id. ¶ 113.) In the mother's view, had the source of

Plaintiff's difficulty been properly identified, Plaintiff's reading skills would have dramatically improved and she would be better prepared to function outside her home. (Id.) On this point, there was conflicting evidence evaluated by the ALJ.

The ALJ found most convincing certain information regarding the interrelationship between auditory processing and reading deficiencies based on a California Department of Education position paper. (Id. ¶ 114.) The ALJ wrote:

> "There is minimal evidence of valid and reliable studies to support 'therapeutic interventions' for auditory processing disorders . . . such treatments must be viewed as experimental and are not appropriately included in a student's IEP . . . . Various accommodations and educational strategies, such as preferential seating and use of visual supports are often successful for students with processing deficits." Ms. Engalla provided Mother and the IEP team with a generalized strategy sheet . . . which provided 15 suggestions for dealing with the disorder, all of which described types of accommodations and teaching. None of the suggestions recommended a comprehensive reading program.

(Id.) From the record, it is evident that BUSD provided a number of assessments geared toward assessing Plaintiff's reading ability.

With regard to Plaintiff's reading comprehension skills, the ALJ properly considered the weight of Plaintiff's teachers' testimony that discussed Plaintiff's reading comprehension skills. The ALJ stated:

> Georgina Whyte, Student's RSP teacher indicated that Student did not always turn in her assignments, but when she did, it was quality work, on grade level, and correct. Mr. LaGrass, Student's 8th, 10th, and 11th grade math teacher, indicated that Plaintiff worked independently in class and completed grade level work using the standard, general education textbook. Mr. Walker, Student's SLP for five years, indicated Student enjoyed reading aloud and was expressive when doing so. Ms. Gomez, Student's teacher in the 9th, 10th, and 11th grades, reported that Student succeeded in her classes. Student read and comprehended grade level text, participated in class, and was capable of 'B' work. Ever more convincing was Ladell Sill, Student's teacher since the 9th grade. Ms. Sill was Student's case manager and also had Student in her English Arts Lab in the 11th grade. The District placed Student in the English Lab to prepare her to pass the CAHSEE. This lab was not intended to primarily focus on Student's reading skills, but rather was intended to remediate her study skills. Ms. Sill reported that Student could read and comprehend grade level materials. She based her opinion upon teacher made tests of the materials covered, verification of Student's

comprehension and recall, and Student's responses to her assignments.

(Id. ¶ 117.) This clearly shows that several of Plaintiff's teachers had performance-based evidence from which they concluded that Plaintiff could read and comprehend what she read at her grade level. Although Plaintiff's grades were sometimes unsatisfactory, the testimony of teachers indicated that Plaintiff's grades would significantly improve if she merely turned in her assignments and homework. In short, BUSD adequately assessed Plaintiff on numerous occasions, properly relied on the observations of classroom teaches in evaluating Plaintiff's needs, and provided services appropriate to her needs and abilities. In short, Plaintiff was provided with a FAPE because BUSD complied with the procedural and substantive requirements of the IDEA. The ALJ's determination on the issue of reading services is **AFFIRMED**.

2. WHETHER THE ALJ CORRECTLY DETERMINED THAT BUSD FAILED TO PROVIDE ADEQUATE TRANSITION SERVICES DURING THE 2004-2005 AND 2005-2006 SCHOOL YEARS

Plaintiff argues that BUSD failed to provide adequate transition services to meet Plaintiff's unique needs during the 2004-2005 and 2005-2006 school years. As a result, Plaintiff was not prepared for life after high school, lacking basic vocational skills to seek and obtain employment. BUSD, however, argues that it created valid ITPs for the relevant school years and offered adequate transition services and programs.

The IDEA requires that the IEP include a statement of measurable goals based on transition assessments and an outline of the services needed to assist the child in reaching those goals. The failure of an IEP team to comply with the requirements for transition planning is a procedural violation of the IDEA. However, the failure to properly formulate a transition plan warrants relief only upon a showing of a loss of educational benefits or a denial of a FAPE.

a. The 2004-2005 School Year

Prior to July 1, 2005, a student's IEP was required to contain a statement of transition service needs of the student that delineated postsecondary goals. In addition, beginning at age sixteen, a student's ITP must include a statement of needed transition services, and when appropriate, a statement of the interagency responsibilities or any needed linkages. (20 U.S.C. § 1414(d)(1)(A)(vii)(I)-(II), amended by 20 U.S.C. § 1414).

Plaintiff contends that during the 2004-2005 school year, Plaintiff's ITP failed to provide student with appropriate services and that BUSD failed to provide Plaintiff with a proper transition assessment as requested by Plaintiff's mother. After Plaintiff's mother received BUSD's reassessment plan in September and December 2004, she requested, in writing, that BUSD provide Plaintiff with a transition assessment. (ALJ Decision ¶ 76.) BUSD failed to do so. (Id.)

At the time of the October 2004 ITP, Plaintiff was sixteen years old. Both the 2003 and 2004 ITPs indicated that Plaintiff would need the support services of the Department of Rehabilitation and the Resource Center. (Id. ¶ 77.) When Plaintiff and her mother attended the IEP/ITP meeting on October 12, 2004, no representatives of either the Department of Rehabilitation or the Resource Center attended the meeting. (Id. ¶ 78.) The ALJ found that the lack of a transition assessment and the failure of the Department of Rehabilitation or the Resource Center to provide input were deficiencies that did not adequately address Plaintiff's unique needs. (Id. ¶ 78.)

At the ITP meeting, the ITP team emphasized that Plaintiff needed to concentrate on her academic performance to ensuring graduation from high school and should begin considering career options. (Pl.'s Ex. MM.) The ITP team also noted specific areas of concern in financial planning, social interaction/behavior, vocational assessments and daily living. (Id.) The team developed activities to help Plaintiff address her needs, but the ITP provided no specific services for Plaintiff. The 2004 IEP team also requested that Plaintiff receive a vocational educational assessment to

determine career interests and specific vocational goals. (ALJ Decision ¶ 81.) BUSD again did not provide this assessment. (Id.)

With regard to the 2004 ITP, the ITP indicated that Plaintiff needed to obtain her "Driver's License," "California DMV ID," "Transit ID/Bus Pass," and "Resume/Portfolio." (Pl.'s Ex. MM.) However, the ITP never identified any services to address these goals. In addition, the ITP listed Financial Planning, Social Interaction/Behaviors, Vocational Assessments, and Daily Living as areas of concern. (Id.) The ITP did not identify any services or goals to address these areas. The ITP also identified various agencies that were needed for Plaintiff's ITP and transition issues to be resolved. (Id.) These agencies were never included in any of Plaintiff's ITPs.

The ALJ correctly concluded that the IEP team failed to develop specific transition goals for Plaintiff and failed to identify specific services to assist Plaintiff in achieving such goals. BUSD therefore failed to provide sufficient transition services for Plaintiff during the 2004-2005 school year.

b. The 2005-2006 School Year

As of July 1, 2005, the reauthorized IDEA defined "transition services" as "a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation." (20 U.S.C. § 1401(34).)

Plaintiff's September 21, 2005 IEP contained an ITP. (Pl.'s Ex. BBB.) The IEP team interviewed Plaintiff and her mother, and determined in the ITP that Plaintiff needed to focus on passing the California High School Exit Exam in order to graduate

with a high school diploma. (Id.) The ITP proposed that Plaintiff obtain a driver's license and a part-time job, and also suggested the possibility of community college for Plaintiff's vocational training. (Id.) However, the ALJ found that the ITP did not address any progress on career preparation activities or describe any assistance BUSD would give to Student to achieve her career goal. (ALJ Decision ¶ 81.) The ALJ noted that Plaintiff needed specific guidance in how to locate information, how to determine what she would need in order to qualify for admission to specific programs, and how to complete the application process. (Id.)

The previous year, the 2004 IEP team had also requested a vocational assessment to determine career interests and specific vocational goals. (Pl.'s Ex. MM.) BUSD still had not provided this assessment. The ALJ found that the failure to provide a vocational assessment when previously requested by both Plaintiff's mother and the IEP team constituted a procedural violation of FAPE. (ALJ Decision ¶ 81.) Without the data from a proper transition assessment, Plaintiff, her mother, and the IEP team lacked sufficient information to provide Plaintiff with adequate transition services, thereby depriving Plaintiff of educational benefits and a FAPE. (Id.) Here, the ALJ's determinations on this issue were both thorough and careful. The ALJ clearly examined the 2004 and 2005 ITPs, heard evidence of any services that might have been provided to Plaintiff at the hearing, and concluded that BUSD had not provided sufficient information or services for Plaintiff to meet the goals outlined in her ITPs.

c. BUSD's Programs and Services

BUSD argues that the school district offered various programs and activities and Plaintiff failed to take advantage of them. BUSD asserts that Plaintiff received notice of an Information Night scheduled for November 3, 2004 where, at the Transition Information Meeting, BUSD provided useful information to all parents who attended. BUSD notes that a counselor and administrator from the Department of Rehabilitation were also present. In addition, BUSD argues that Linda Skipper, a career

and technical educational teacher with BUSD, gave information to Plaintiff about the WorkAbility program, a career exploration program designed to give students hands-on job experience. (Skipper Depo. at 11-12.) However, Plaintiff decided that she would take summer school instead and was not interested in working at that time. (Id. at 14.) On June 10, 2005, BUSD conducted a Transition Guide presentation where students were given information and a handbook prepared by the Los Angeles County of Education and were told about the ROP Diversified Occupations class. (Id. at 15.) Plaintiff was present at the presentation. (Id. at 14.)

The IEP team, however, never determined that any of these programs and activities would meet Plaintiff's unique transition needs. The IDEA requires that the IEP team, in creating an ITP for a student, do more than simply identify resources. The IDEA requires a plan and specific goals and services to be made part of the ITP. The ALJ properly concluded that none of the programs or services offered was designed to specifically address Plaintiff's needs and did not meet the standard required by the IDEA. BUSD failed to explain how programs offered to the general student body are sufficient to meet the specificity required in a valid and appropriate ITP. The claims of Linda Skipper that services were available or offered are irrelevant to whether the ITP was appropriate or sufficient.

d. Conclusion Re: Transition Services

The ALJ determined that BUSD was aware that, based on Plaintiff's unique needs, she would need specific guidance to pursue her post-graduation career or education. With no transition assessment or access to information, BUSD did not provide Plaintiff with sufficient goals or information to pursue on her own. The failure to provide these assessments and goals was a procedural violation of the IDEA. The violation denied Plaintiff a FAPE when Plaintiff and her mother did not receive adequate transition services during the 2004-2005 and 2005-2006 school years. The ALJ's determination on this issue is **AFFIRMED**.

3. APRIL 27, 2005 INTERIM SETTLEMENT AGREEMENT

The next issue is whether the ALJ correctly concluded that the Interim Settlement Agreement resolved all issues related to Plaintiff's due process hearing request, precluding Plaintiff from raising the issue of compensatory services after the settlement agreement. On March 21, 2005, Plaintiff was suspended for allegedly starting a fire on school property and removed from her educational placement. (ALJ Decision ¶ 39 n.8.) Plaintiff was not provided with any alternative educational services. On April 7, Plaintiff filed a Mediation and Due Process Hearing Request Form (Pl.'s Ex. A.). On April 8, 2005, the Special Education Hearing Office sent Plaintiff a "Notice of Expedited Due Process Hearing" that stated that the office had scheduled an expedited hearing for April 27, 2005. (Pl.'s Not. of Lodging of Admin. Rec. Pleadings and Order at 13-14.) The parties participated in mediation on April 20, 2005, but were unable to come to an agreement. (Def.'s Ex. 19.) However, on April 27, 2005, Plaintiff and BUSD entered into an Interim Settlement Agreement, which states that it resolved all expedited issues to date. (Def.'s Ex. 20.) Regrettably, the agreement fails to define or describe the "expedited issues." Nevertheless, the ALJ ruled that the Interim Settlement Agreement resolved the issue of compensatory education and barred Plaintiff from presenting evidence on that issue at the due process hearing. Plaintiff argues that the ALJ erred when it denied Plaintiff the opportunity to raise the issue of compensatory education services for the period of time that she had been removed from her educational placement in March 2005 without appropriate procedural protections or alternative placement.

The record before the Court contains no evidence from which the ALJ could properly conclude that the issue of compensatory education services had been removed from the hearing. The due process complaint does not separately identify issues for expedited resolution and the settlement agreement does not identify or define "expedited issues" and does not otherwise identify compensatory education as an issue

that the parties had settled. Defendant cites no authority and presents no logically compelling argument as to why that issue would have been decided on an expedited basis. The need to resolve Plaintiff's placement is easily understood; she had been suspended, was receiving no educational benefits, and, absent an expedited settlement or hearing, would have remained in that status indefinitely. Compensation, however, was a matter that could be resolved in the ordinary course without any negative impact on Plaintiff's educational opportunities.[3]

For these reasons, the ALJ improperly concluded that the Interim Settlement Agreement resolved the issue of compensatory education. The Court **REVERSES** and **REMANDS** the issue to the ALJ with instructions to consider the issue of compensatory education.

4. WHETHER THE ALJ PROPERLY ORDERED BUSD TO REIMBURSE PLAINTIFF FOR THE COST OF THE LINDAMOOD-BELL INDEPENDENT EDUCATIONAL EVALUATION

Plaintiff's mother requested an IEE from Lindamood-Bell at the September 21, 2005 IEP meeting. (Pl.'s Ex. BBB-24.) BUSD neither authorized the IEE nor provided Plaintiff's mother with a written denial of her request. BUSD also failed to initiate a due process hearing to validate its assessments. As a result, Plaintiff independently obtained the IEE from Lindamood-Bell in April 2006, which was then presented to BUSD for consideration. Consequently, BUSD notified Plaintiff that it would not reimburse Plaintiff for the cost of the Lindamood-Bell IEE. Plaintiff argues that BUSD's failure to respond to her mother's request for an assessment by Lindamood-

[3]The parties claim to find support for their respective positions in the language of the IDEA – particularly Section 1415(b)(6), (e), and (k). The Court considers these arguments to be convoluted, confusing and entirely beside the point. The Court must determine the content of the parties' agreement, not what section Plaintiff had in mind when filing the original due process complaint. Had the parties intended to resolve issues regarding compensatory education through their settlement agreement, they could have easily included that issue in their settlement agreement. They did not. The Court cannot add what the parties failed to include.

Bell entitled Plaintiff to independently obtain the assessment and seek reimbursement from BUSD. BUSD, however, argues that it should not be forced to reimburse Plaintiff because neither Plaintiff nor her mother ever objected to the assessment conducted by the school district.

When a parent disagrees with an assessment obtained by a district, the parent has the right to an IEE from a qualified specialist at public expense unless the district demonstrates at a due process hearing that its assessment was appropriate. (CAL. EDUC. CODE §§ 56329(b)-(c), 56506(c), 34 C.F.R. § 300.502.) If a parent requests an IEE, the school district must, without unnecessary delay, either initiate a due process hearing to show that its assessment is appropriate, or ensure that an IEE is provided at public expense. (34 C.F.R. § 300.502(b)(2); Norton v. Orinda Union Sch. Dist., 168 F.3d 500 (9th Cir. 1999).)

Here, the ALJ properly ordered BUSD to reimburse Plaintiff for the cost of the IEE. Plaintiff's mother's request for an IEE from Lindamood-Bell at the September 2005 IEP meeting conveyed to BUSD that the current assessment was unsatisfactory. The ALJ concluded that the mother's request at the IEP meeting was sufficient to constitute a disagreement with BUSD's assessment, and that BUSD should have responded by either providing Plaintiff with the requested IEE or initiating a due process hearing to show that BUSD's assessment was appropriate. Plaintiff's mother's request, which is contained in Plaintiff's IEP, was sufficient to constitute disagreement. BUSD's failure to take any action entitles Plaintiff to an independent educational assessment at public expense. Therefore, the ALJ correctly ordered BUSD to reimburse Plaintiff for the Lindamood-Bell IEE and the Court **AFFIRMS** the ALJ's ruling on this issue.

5. WHETHER THE ALJ PROPERLY ORDERED BUSD TO PROVIDE PLAINTIFF WITH A VOCATIONAL ASSESSMENT AND TEN HOURS OF TUTORING

The ALJ found that the September 21, 2005 IEP was not adequate to meet

Plaintiff's unique needs during her junior year of high school. (ALJ Decision ¶ 127.) The deficiencies in Plaintiff's ITP prevented Plaintiff from benefitting from her education, which resulted in a denial of a FAPE. The ALJ denied Plaintiff's request for compensatory services in the form of a reading program from Lindamood-Bell. The ALJ noted that under Rowley, BUSD was not required to provide more services on a higher level than it is required to provide in the educational portion of Plaintiff's IEP. (Id. ¶ 128.) Nevertheless, the ALJ acknowledged that a remedy was appropriate and ordered BUSD to (1) offer Plaintiff an age-appropriate privately funded vocational assessment for Plaintiff's use in her current school setting and (2) provide Plaintiff with ten (10) hours of one-to-one tutoring addressing how to research vocational schools, colleges, careers and employment, how to contact college disability advisors, and how to take tests. (Id.)

Plaintiff argues that she is entitled to vocational services because of BUSD's failure to provide Plaintiff with adequate transition services. Plaintiff asserts that the current remedy of ten hours is insufficient to compensate Plaintiff for what she should have received. Plaintiff requests that the remedy should be increased to eighty hours. (Hearing Transcript at 7.) Plaintiff's counsel suggests that students often receive an hour a week of transition training over the course of a school year. (Id. at 6.) BUSD, however, argues that the school district provided Plaintiff with numerous ongoing assessments and extensive ongoing counseling with respect to vocational services. Thus, because BUSD properly provided Plaintiff with transition services, no additional assessment or tutoring with respect to vocational services is required.

The ALJ determined that BUSD must provide Plaintiff ten hours of one-to-one tutoring in compensatory services for its failure to provide appropriate transition services in the relevant years. Plaintiff's counsel asserts that if such services had been offered, Plaintiff may have received weekly assistance, at a minimum of one hour a week, from school organizations and counselors who could have given Plaintiff special

attention specific to her particular needs. (Id. at 5.) After a thorough analysis regarding whether BUSD failed to provide Plaintiff with adequate transition services, the ALJ determined that ten hours of one-on-one tutoring was adequate to redress BUSD's failure to provide sufficient services. Because the ALJ was presented with the relevant testimony and conducted a thorough and extensive examination of the impact of BUSD's failure, the Court will not disturb the ALJ's determination. Even Plaintiff's counsel pointed out that although ten hours is minimal, the law does not require an hour-for-hour compensatory education. (Id.) The ALJ's conclusion that ten hours is necessary as compensatory relief was also reasonable. BUSD's failure to provide adequate transition services came at a time in Plaintiff's high school career where such services and skills are essential to Plaintiff's success as an independent adult. While BUSD asserts that Plaintiff had the opportunity to take advantage of various transition programs and activities offered to the general student body, the ALJ properly determined that the school district failed to provide services designed specifically for Plaintiff. The Court finds that ten hours of one-on-one tutoring, in connection with the additional vocational assessment, is an adequate remedy to recoup what Plaintiff may have suffered. Therefore, the Court **AFFIRMS** the ALJ's determination of Plaintiff's remedy for BUSD's failure to provide adequate transition services.

IV. CONCLUSION

For the foregoing reasons, the Court concludes as follows:

(1) The ALJ's determination that BUSD provided Plaintiff with sufficient assessments and services with respect to her reading comprehension is AFFIRMED;

(2) The ALJ's determination that BUSD failed to provide adequate transition services during the 2004-05 and 2005-06 school years is AFFIRMED;

(3) The ALJ's determination that the April 27, 2005, Interim Settlement Agreement resolved the issue of compensatory education is REVERSED AND REMANDED for further proceedings;

(4) The ALJ's determination that BUSD should reimburse Plaintiff for the cost of the Lindamood-Bell Independent Educational Evaluation is AFFIRMED;

(5) The ALJ's order that BUSD provide Plaintiff with a vocational assessment and up to ten hours of one-on-one tutoring is AFFIRMED.

Plaintiff is to prepare and submit a form of judgment consistent with this memorandum and order. The proposed judgment should be submitted to the Court no later than Monday, November 16, 2009.

IT IS SO ORDERED.

DATED: November 9, 2009

Judge Gary Allen Feess
United States District Court

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JS-6

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BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT

JULIE WALHOVD, Plaintiff, v. BELLFLOWER UNIFIED SCHOOL DISTRICT, Defendant.	CASE NO. CV 08-00394 GAF (Cwx) ~~(PROPOSED)~~ JUDGMENT

This matter came on for trial on September 1, 2009 on Plaintiff's Complaint for and Defendant's Counterclaim. and the Court having reviewed and considered the objections to the proposed judgment,

Following oral argument by the parties, it is hereby **ORDERED, ADJUDGED AND DECREED:**

The BUSD adequately assessed Plaintiff in the area of reading, and provided services in reading comprehension that were appropriate to her needs and abilities. The ALJ's determination that BUSD provided Plaintiff with sufficient assessments and services in reading comprehension is **AFFIRMED.**

During the 2004-05 and 2005-06 school years, BUSD

and its IEP team did not determine what transition programs and activities were necessary to meet Plaintiff's unique educational needs. BUSD's failure to provide transition assessments and goals to Plaintiff was a denial of FAPE during the 2004-05 and 2005-06 school years.

The ALJ's determination that BUSD failed to provide adequate transition services during the 2004-05 and 2005-06 school years is **AFFIRMED**.

As a remedy for BUSD's failure to provide adequate transitional services, the ALJ ordered that BUSD provide Plaintiff with a vocational assessment and up to ten hours of one-to-one tutoring in compensatory services.

The ALJ's order for compensatory education for BUSD's failure to provide appropriate transitional services is **AFFIRMED**.

The Interim Settlement Agreement, entered into by the parties on April 27, 2005, did not address nor resolve the issue of compensatory education, as there was nothing in the settlement agreement that identified the issue of compensatory education as one settled by the parties.

The ALJ's finding that the Interim Settlement Agreement resolved the issue of compensatory education is **REVERSED**, and the issue is **REMANDED** to the ALJ with instructions that the ALJ consider the issue of compensatory education for Plaintiff.

The ALJ properly ordered BUSD to reimburse Plaintiff

for the cost of the IEE by Lindamood-Bell; that order is **AFFIRMED** by the Court.

The Court further finds that Plaintiff C.B. was the prevailing party in the underlying administrative due process hearing, Case No. 2007020519 (consolidated with No. 2005110764), and that her degree of success in that matter was both significant and substantial, justifying an award of reasonable attorney's fees and costs to Plaintiff. T.N. v. Seattle School Dist No. 1, 474 F.3d 1165, 1171-73 (9th Cir. 2007).

Dated: 11/19/09

UNITED STATES DISTRICT COURT JUDGE