

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015090860

v.

HEMET UNIFIED SCHOOL DISTRICT.

---

**DECISION**

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings on September 11, 2015, naming the Hemet Unified School District. OAH continued this matter on October 30, 2015.

Administrative Law Judge Paul H. Kamoroff heard this matter in Hemet, California, on February 22, 23, 24, March 2, and March 3, 2016.

Student's mother appeared on behalf of Student. Student did not attend the hearing.

Peter Sansom, Attorney at Law, appeared on behalf of District. Leah Davis, District's Director of Special Education, and Sherri Miller, District's Special Education Coordinator, attended the hearing.

At the request of the parties, OAH continued this matter for closing briefs. The record closed on March 21, 2016, upon receipt of written closing briefs from the parties.

**ISSUES<sup>1</sup>**

Whether District denied Student a free appropriate public education during the 2013-2014 school year and extended school year, beginning September 11, 2013, and the 2014-2105 school year and extended school year, by:

- 1) Failing to provide Student an appropriate psycho-educational evaluation;

---

<sup>1</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

- 2) Failing to offer appropriate behavior and academic services;
- 3) Failing to offer appropriate goals and objectives; and
- 4) Failing to offer appropriate reading interventions?

## SUMMARY OF DECISION

Student had serious educational delays in reading, writing, math, and behavior. The individualized education programs District offered Student failed to provide special education or related services. The lack of intervention was not appropriate to meet Student's unique needs, and he regressed academically and behaviorally while under District's care. Accordingly, the Decision finds that District denied Student a FAPE on various grounds.

## FACTUAL FINDINGS

### *The Student*

1. Student was an 18-year-old young man who resided with his parent within District's boundaries during the applicable time frame. He was eligible for special education under the eligibility category specific learning disability for disorders in reading, writing, and math. At the time of the hearing, Student had graduated from Tahquitz High School, a District school, and had enrolled to attend a community college. He had not enrolled in any classes at the community college. Student authorized his parent to act on his behalf for all matters pertaining to his educational program.

2. Specific learning disability is a disorder characterized by a severe discrepancy between ability and achievement to a degree that the pupil cannot be adequately served in regular classes without the provision of special education or related services. Student's specific learning disorder correlated to delays in auditory processing, visual processing, sensory processing, and phonological processing. As a result of his disability, Student had difficulty with written expression, basic reading skills, reading comprehension, reading fluency, and math reasoning.

3. Student also demonstrated behavioral and emotional difficulty. He had conflicts with teachers and school staff, was removed from classes, was suspended from school, and risked expulsion as a result of maladaptive behavior.

4. Since 2011, District had provided Student an IEP which consisted of general education with accommodations, such as additional time to complete tasks.

*District's Assessments Prior to the Dispute*

5. District first assessed Student in October 2005. Student was eight years old and in the third grade. Amongst other tests, the District examiner performed several standardized assessments including the Woodcock Johnson-III Test of Academic Achievement; the Comprehensive Test of Phonological Processing; the Berry Buktenica Developmental Test of Visual-Motor Integration; and the Test of Auditory Perceptual Skills-Revised.

6. The Woodcock Johnson assessed Student's academic abilities. Student had below average abilities in oral language, listening comprehension, basic reading skills, and phonological knowledge.

7. The Comprehensive Test of Phonological Processing assessed Student's phonological awareness, memory and rapid naming. A deficit in phonological processing abilities was the most common cause of learning disorders and, in particular, reading disabilities. Student received low average scores in phonological memory and rapid naming, and a seriously delayed score, at the fifth percentile, in phonological awareness. This means that out of 100 students assessed, 95 students performed better than Student on this assessment. Student had a phonological processing disorder.

8. The Berry Buktenica Developmental Test of Visual-Motor Organization measured Student's visual-motor integration. Student's functioning was seriously delayed, at the fifth percentile, with an age equivalency of five years, six months. Student had a visual processing disorder.

9. The Test of Auditory Perceptual Skills assessed Students auditory perceptual skills. Student was at the first percentile in auditory word discrimination and auditory perceptual quotient. Student scored lower than 99 out of 100 children tested to norm this test. Student had a severe auditory processing disorder.

10. District school psychologist Lori Ruziska<sup>2</sup> reassessed Student in November 2008. Amongst other tests, Ms. Ruziska performed the Woodcock Johnson and the Berry Buktenica assessments. She did not assess Student in phonological processing or auditory processing.

11. Student continued to have pervasive academic delays. Student had substantial deficits in written expression, basic reading skills, reading comprehension, reading fluency, and math reasoning. Student was again at the fifth percentile in the area of visual processing. The examiner recommended that Student receive special education and related services.

---

<sup>2</sup> Ms. Ruziska did not testify during the hearing.

### *The 2011 Assessment*

12. District examiner Robert DeCarmo, Psy.D.,<sup>3</sup> reassessed Student in September 2011. Student was 14 years old and in the ninth grade. Amongst other tests, Dr. DeCarmo utilized the Woodcock Johnson. He did not assess Student in the areas of phonological processing, auditory processing, or visual processing.

13. Student was still substantially delayed in all academic areas. In basic reading skills, he was at the fourth grade level; reading fluency, at the third grade level; reading comprehension at the second grade level; math calculation at the eighth grade level; math fluency at the sixth grade; applied problems at the fifth grade; spelling at the fifth grade; writing fluency at the fourth grade; and writing samples at the second grade. When compared to his same aged peers, Student was between one-to-seven years delayed in his academic abilities.

14. Student also had deficits in sensory processing and conceptualization. Dr. DeCarmo concluded that Student's learning disabilities could not be corrected without special education and related services. Notwithstanding the recommendations contained in District's assessment, District did not offer Student any special education or related services.

### *The California High School Exit Exam*

15. California developed the California High School Exit Exam to determine proficiency as a requirement for a high school diploma.<sup>4</sup> The CAHSEE was divided into two main sections: English-language arts and mathematics. The English-language arts section tested students at a 10th-grade level, and required a score of 60 percent to pass; the mathematics section tested students at an eighth-grade level, and required a score of 55 percent to pass. Normally, students were given the CAHSEE at the beginning of their sophomore year. As of the 2011-2012 school year, more than three-quarters of students passed the test more than two years before they finished high school, and more than nine out of 10 students passed the test by the end of high school.

16. In February 2013, Student took the CAHSEE, with accommodations. He passed the math section, but failed the English-language arts section of this standardized test.

### *The 2013 IEP*

17. The first IEP in dispute for this matter was dated October 2, 2013. The IEP team for this offer included Student; general education teacher Gabriel Awbrey;

---

<sup>3</sup> Dr. DeCarmo did not testify during the hearing.

<sup>4</sup> Beginning in 2010, section 504 and IEP eligible disabled students may meet the CAHSEE requirement through an exemption.

administrative designee Robert Poe; and school counselor Natalie Valles.<sup>5</sup> Student was 16 years old and attended the 11th grade at Tahquitz.

18. The IEP team did not review Student's progress towards prior annual goals. The team did review Student's present levels of performance. Student had struggled in his Algebra 2 class the prior year, 10th grade. In response, prior to the IEP team meeting, District had placed Student in an Algebra 1 class, usually reserved for freshman students, during his 11th grade. Student had failed the same science class four times during his freshman and sophomore years, and had failed his history class the semester prior to the October 2013 IEP team meeting.

19. The IEP erroneously recorded that Student was at grade level in reading and math. Per District's most recent testing, Student was between four-to-seven years behind grade level in reading, and between one-to-five years delayed in math.

20. The October 2013 IEP offered three goals, two in the area of transition, one for writing. Goal one, for transition, was for Student to obtain a grade of "C" or better by submitting his assignments 100 percent of the time. Goal two, in writing, was for Student to write a four-to-five paragraph essay, including a thesis statement and support within the body and conclusion paragraphs, with 80 percent accuracy. The writing goal was identical to Student's 2012 writing goal, which indicated that Student had not met that goal. Goal three, also in transition, was for Student to obtain weekly grades from his teachers.

21. Student's behavior impeded his learning. Student lacked the ability to monitor himself and required additional support. Student was defiant, off-task, inattentive, and disruptive while in class. Accordingly, the IEP notes recommended adding behavioral support and a behavior goal. However, the IEP failed to include behavior services or a behavior goal.

22. The October 2013 IEP offered accommodations including extra time to take tests, having directions repeated, access to class notes, and access to a case carrier.

23. The IEP offered Student general education, an individualized transition plan,<sup>6</sup> and a related service described as specialized academic instruction for one, ten- minute session per month. This service was for Student to consult with the school counselor regarding his grades. Ms. Valles, who was the counselor responsible for this service, would occasionally and briefly meet with Student to remind him to remind his teachers that he

---

<sup>5</sup> Ms. Valles was an academic, not psychological, counselor.

<sup>6</sup> The individualized transition plan's goal was for Student to attend a four year college upon completion of high school to become a sports broadcaster. The plan offered Student college and career awareness consultation with the school's academic counselor, seven times per year, to meet this goal. The parties agreed that the individualized transition plan did not pertain to Student's claims and was not an issue for the hearing.

could hand work in late and had extra time for assignments. Ms. Valles did not consult directly with Student's teachers, or provide any academic instruction to Student. For those reasons, that service did not constitute specialized academic instruction. Rather, it was an occasional reminder to Student of his IEP accommodations. The October 2013 IEP therefore did not offer Student any special education or related services. Mother consented to the IEP on October 3, 2013.

24. Following the October 2013 IEP, Student struggled in his 11th grade English class. He had difficulty understanding the class material and he had behavior conflicts with his teacher. In response to Student's problems, Ms. Valles recommended that Student be placed in a resource specialist program class for English. As Student's school counselor and case carrier, she believed that moving Student to a slower paced and more remedial class, with a different teacher, would solve both his academic difficulty and his behavioral conflict with his then English teacher. Ms. Valles described an IEP team meeting held at some point during the 2013-2014 school year, wherein District offered Student a resource specialist program class for English. She recalled that Student's parent accepted that offer and Student attended the resource specialist program class for less than one week. At that point, Student requested to be moved back to the general education English class and District agreed to his request.

25. Ms. Valles' description of events was problematic. There was no record of that IEP team meeting taking place. Student's educational file did not include the IEP, or class transfers, described by Ms. Valles. Ms. Davis, District's director of special education, and Parent, each testified that this IEP team meeting did not occur and that District had never offered Student a resource specialist program class. Finally, had the offer been made, it would have been inappropriate to remove Student from the resource specialist program class solely because he requested that transfer. However, Ms. Valles' testimony was illustrative that Student had academic and behavior difficulty during his 11th grade English class.

#### *The CAHSEE, Part Two*

26. On February 4, 2014, during the second semester of Student's junior year of high school, Student again failed the English-language arts section of the CAHSEE.

#### *Student's Behavior*

27. Student had behavioral difficulty with peers and staff throughout high school. Student was defiant, disrupted class, fought with students and staff, cheated, and was confrontational. During his freshman, sophomore and junior years, he had been referred for discipline 13 times by seven different teachers for disruptive behavior at school. In January 2014, during his junior year, school counselor Matt Bieber<sup>7</sup> referred Student for mental health intervention. As a school counselor, Mr. Bieber was concerned that Student's

---

<sup>7</sup> Mr. Bieber was an academic, not psychological, counselor.

behaviors indicated that he had an emotional disorder. However, District failed to respond to Mr. Bieber's referral. None of Student's IEP's recorded that referral, or offered Student services, or an assessment for an emotional disorder.

28. On March 13, 2014, District staff referred Student for special education behavior intervention. The referral document stated that Student should be provided "Special Education Anger Management." However, no such referral ever materialized. District did not convene an IEP team meeting to address this referral, offer to assess Student in the area of behavior, or attempt to add behavior services to his IEP. Instead, outside of the IEP process, District provided Student a general education anger management program, entitled Peaceful Alternatives to Tough Situations.

29. Peaceful Alternatives to Tough Situations was a group counseling program supervised by Jeremy Stevens. District made Peaceful Alternatives to Tough Situations available to Student, along with several other general education students, once weekly, for nine weeks, from March 27, 2014, to May 28, 2014. Student attended seven of those sessions. Mr. Stevens was not directly familiar with Student and had not directly counseled Student. Neither Mr. Stevens, nor the direct counselor, had reviewed Student's school records, observed him in class or outside of counseling, or assessed Student. Mr. Stevens did not know why Student presented behavioral challenges, why he required anger management, or if his behavior impacted his education. He did not know if there were antecedents to Student's behaviors, or the functions of those behaviors. No evidence was provided that Student benefited from the general education services, and his behavior continued to deteriorate following that program.

30. At the conclusion of the 2013-2014 school year, Student transferred from Tahquitz, to West Valley High School, a District school.

#### *District's 2014 Psycho-Educational Report*

31. District conducted its last triennial assessment of Student in September 2014, entitled Psychoeducational Report. Student was 17 years old and in the 12th grade at West Valley. School psychologist Michael Weiss was charged with conducting Student's 2014 triennial reassessment.

32. Mr. Weiss was not a careful assessor or a credible witness. His report claimed that he had reviewed Student's educational records, yet Mr. Weiss was unfamiliar with Student's educational history. He was not familiar with District's prior testing or diagnoses. He was not aware that Student had been identified with delays in writing, math, visual processing, auditory processing, phonological processing, or sensory processing. Mr. Weiss had no knowledge of Student's behavior history or emotional problems. Mr. Weiss did not meet with or observe Student, or directly assess him. Mr. Weiss did not meet with Student's teachers or his parent as part of the assessment.

33. Mr. Weiss claimed that he had spoken to Student's school counselor and case carrier at West Valley, Trent Long,<sup>8</sup> who had spoken to Student's teachers at West Valley, as part of his assessment. However, this claim was not credible because Student's teachers at West Valley, including Antonio Ramos and Curt Hoelscher, testified that they had not spoken to Mr. Long regarding Student's assessment. Mr. Weiss did not contact anyone from Tahquitz as part of his assessment, although Student had transferred from Tahquitz to West Valley the month prior to the report.

34. Mr. Weiss did not informally assess Student using inventories or rating scales, or formally assess Student using standardized testing. Rather, District's September 2014 triennial assessment included a single measure, the Wide Range Achievement Test- Fourth Edition, which was performed by Jennifer Long, a District employee.<sup>9</sup> That measure was a brief academic achievement test.

35. Mr. Weiss erroneously believed that the sole purpose of a triennial evaluation was to determine whether a student was still eligible for an IEP. Based upon his review of Ms. Long's brief academic testing, Mr. Weiss determined that Student still qualified for an IEP, due to a reading comprehension disorder.<sup>10</sup> Because he had found that Student continued to be eligible for an IEP, Mr. Weiss elected to forego any additional testing, including testing in areas of identified or suspected deficit, other than in the area of reading comprehension. Mr. Weiss failed to assess Student's areas of deficit in auditory processing, visual processing, phonological processing, sensory processing, or behavior.

36. The Wide Range Achievement Test revealed that Student had failed to make any progress, and had regressed, since District's 2011 assessment. Student had regressed to a fourth grade level in word reading, sentence comprehension, and spelling. This means he was eight years delayed from his grade level. Student received a score at the fifth grade level in math, seven years delayed from his same-aged peers. In spelling Student had regressed to a fourth grade level. Student's reading composite score had regressed to below the third grade level, at the third percentile, which was more than nine years delayed in comparison to his same-aged peers. Student had regressed from one-to-seven years delayed in 2011, to seven-to-nine years delayed in 2014.

---

<sup>8</sup> Trent Long was an academic, not psychological, counselor.

<sup>9</sup> Jennifer Long was not identified as an assessor in District's 2014 triennial assessment and did not testify. The only identified assessor in the report was Mr. Weiss. Mr. Weiss testified that the Wide Range Achievement Test was performed by Ms. Long and that the results were valid. No other evidence was provided regarding Ms. Long's credentials, experience, or training.

<sup>10</sup> Mr. Weiss mistakenly referred to Student's eligibility category for special education as a reading comprehension disorder.

37. District's report stated that efforts in the regular classroom did not result in Student's ability to perform successfully in the regular classroom and that Student required special education and related services. However, Mr. Weiss was not familiar with this aspect of his report. Contrary to his report, he testified that it was appropriate for District to maintain the same educational program for Student, with placement in the regular classroom without special education and related services. District's conduct was consistent with Mr. Weiss's testimony, not his report. District offered no modifications to Student's educational program based upon the 2014 triennial assessment.

38. The basis of Mr. Weiss's testimony was his misunderstanding that special education and related services were not available for pupils who were eligible for an IEP under the category specific learning disorder. In particular, Mr. Weiss was not familiar with any research based interventions for pupils who, like Student, had severe reading delays. Rather, Mr. Weiss mistakenly believed that specific learning disabilities were addressed solely through IEP accommodations, such as extra time for assignments. Mr. Weiss attended approximately 140 IEP team meetings per year on behalf of District. A significant portion of those IEP team meetings were held annually for students with a specific learning disability. Mr. Weiss could not recall any IEP for a student with a specific learning disability that included special education or related services. Mr. Weiss acknowledged that Student had regressed in reading, spelling, and math, but pointed out that Student had wanted to remain in general education and had not requested special education services; Mr. Weiss carelessly opined that he "had no reason to doubt what he [Student] said." Mr. Weiss did not understand that District had an affirmative obligation to offer Student an appropriate educational program, regardless of what Student had, or had not, requested.

#### *The October 3, 2014 IEP*

39. District convened Student's next annual IEP team meeting on October 3, 2014, at West Valley. Student was 17 years old and in the 12th grade. In addition to other District staff, Student, his parent, Mr. Weiss, and Student's math teacher, Curt Hoelscher attended the meeting.

40. District reviewed progress towards Student's prior annual goals. Student had met the writing goal and had partially met the two transition goals. The team next reviewed Student's present levels of performance. Student was near the fifth grade level in reading skills; he struggled to maintain a fourth grade level in reading comprehension; and was at the fifth grade level in writing and math. This meant that, per his teachers, Student was eight years delayed in reading, and seven years delayed in writing and math.

41. Student struggled in his science and math classes. He did not understand the material and was in danger of failing each class. In response to those concerns, the District IEP team determined that science and math were elective courses and offered to move Student to less rigorous, elective courses; math and science were only required for Student if he had wanted to attend a four year college. Student changed his science class to an elective class that consisted of running errands for the football coach, Chuck Wolf. Student received

a passing grade. Student stayed in the math class, although he did not understand the course material. Student was in danger of failing throughout the semester; and was able to pass with a “D” because he had turned in a sufficient amount of assignments; not based upon the content of those assignments.

42. Student sometimes blanked out during class and did poorly on tests. To address those concerns, the District IEP team reminded Student and his parent that after-school tutoring was available to all students.

43. Student continued to struggle with behavior. Since the last IEP team meeting, Student had been involved in altercations, verbal and physical, with peers and teachers. However, the IEP team failed to offer any behavior goals or services.

44. The October 2014 IEP offered Student one goal, in the area of reading comprehension. Student was to generate relevant questions on issues when given 12th grade level work in literature. No person was designated responsible to help Student attain this goal. Vicki Pryor was Student’s English teacher during this time. Similar to each teacher who testified, Ms. Pryor had not worked on any IEP goal with Student. In light of District’s September 2014 testing, which placed Student at a third grade reading level, and his teachers’ input at the present meeting, who found that Student struggled at a fourth grade level, a 12th grade reading goal was not appropriate for Student. District did not offer Student any services to support this goal, or to remediate Student’s well known reading deficit.

45. The IEP offered accommodations that included extra time for homework, classwork, and tests, repeated directions, and tests taken in a separate room upon Student’s request.

46. The IEP offered Student the same school counselor service that District offered in the October 2013 IEP, but increased it to one, 10-minute session per week. Mr. Long was responsible for this service. Similar to Ms. Valles, he testified that his service did not include any academic instruction or consultation with Student’s teachers. Mr. Long would occasionally and briefly meet with Student to remind him to remind his teachers that he had accommodations for assignments and testing. This support was an extension of the IEP accommodations and did not constitute specialized academic instruction. The IEP failed to offer Student any special education or related services.<sup>11</sup> Student’s parent consented to the IEP.

---

<sup>11</sup> Similar to the October 2013 IEP, the October 2014 IEP offered college and career awareness consultation with the school counselor. That support was related to Student’s individualized transition plan and was not an issue for hearing.

47. In November 2014, West Valley Principal Dr. John Ballard attempted to refer Student for an educationally related mental health assessment, outside of the IEP process.<sup>12</sup> As the school principal, Dr. Ballard had become familiar with Student's conduct and was concerned that Student suffered from an emotional disorder. Unsolicited, Dr. Ballard contacted Kerry Guizzo, a Licensed Marriage and Family Therapist who had conducted educationally related mental health assessments for pupils at West Valley.

48. Ms. Guizzo did not assess Student. She did meet with Student on two occasions, where she informally interviewed him. On this basis, she recommended that Student receive pull-out, individual, mental health counseling services at school, for 45 minutes per session, each week. However, District failed to provide those services; add them to Student's IEP; call an IEP team meeting to consider Ms. Guizzo's recommendations; or offer to assess Student in the areas of behavior or emotion. Ms. Guizzo did not follow up on her recommendations and lost track of Student when he returned to Tahquitz the following semester.

#### *The Manifestation Determination IEP*

49. District convened a manifestation determination review IEP team meeting for Student on December 8, 2014. A manifestation determination review meeting was required for a school district to unilaterally change an IEP student's placement, including for expulsion. The manifestation determination review team determined whether the conduct that formed the basis of the review action was a manifestation of a pupil's disability. For Student, the meeting was held because he had gotten into a verbal and physical altercation with a campus supervisor at West Valley on December 4, 2014. Due to the severity of the incident, District requested that a manifestation determination IEP team meeting be held to determine if it could expel Student.

50. The manifestation review meeting was brief and did not include a thorough review of Student's school records. Parent pointed out that Student had a history of maladaptive behaviors, and she requested an assessment for an emotional disorder. Although Mr. Hoelscher reported that Student had behavior problems in math class, District's IEP team was not familiar with Student's history of behavior or emotional problems. The IEP team determined that the injury Student inflicted on the campus supervisor was not caused by, or had a direct relationship with, his disability. He therefore could be expelled.

51. The manifestation determination IEP recommended a positive behavior support plan be developed. However, District never developed a positive behavior support plan for Student. Ms. Davis testified that it was a mistake for the written IEP to include a recommendation for a behavior support plan, and that none was developed.

---

<sup>12</sup> Dr. Ballard did not testify during the hearing.

52. No changes were made to Student's IEP. District did not offer Student special education, related services, or behavior supports. District did not expel Student, but it did transfer Student back to Tahquitz for the following school semester, Student's last semester of high school.

*The January 13, 2015 IEP*

53. On January 13, 2015, District convened an amendment IEP team meeting for Student at Tahquitz. The purpose of the meeting was to consider Parent's request for an assessment for an emotional disorder. Following her request for that assessment, Parent had been contacted by Ms. Davis, who convinced her that Student did not need an assessment for an emotional disorder. As a result of that conversation, Parent withdrew her request for the assessment during the January 2015 meeting, and none was offered. Ms. Davis's conduct was contrary to District's affirmative obligation to assess students in areas of suspected deficit. Rather than persuade Parent to withdraw her assessment request, Ms. Davis was required to inform her that, given Student's emotional and behavioral history, District was mandated to assess Student for an emotional disorder.

54. The January 2015 IEP reflected that Student's behavior impeded the learning of himself or others. Student continued to have conflicts with adults when he disagreed with them, and had conflicts with other students. To address that difficulty, District offered Student a behavior goal. The goal was for Student, when confronted with a conflict or disagreement, to "request time away rather than engage in the conflict 100% of the time." The person responsible was an unspecified special education teacher. District did not provide Student special education or related services, and the District witnesses who testified during the hearing were not familiar with that goal. There was no evidence provided that the IEP team's attempt to remediate Student's ongoing behavior challenges through a single, unsupported goal was sufficient to meet Student's unique needs. No other modifications were offered to Student's IEP.

55. Outside of the IEP process, in January 2015, District staff again referred Student for special education mental health services. Similarly, this referral did not materialize into a special education service. District again failed to call an IEP team meeting, to modify Student's IEP, or offer to assess. Rather, District offered the same general education group counseling for anger management that it had provided Student the prior year, at one time per week, through the end of March 2015. Student attended six of the nine sessions offered. Similar to the previous counseling, the counselor did not assess Student, review his records, observe Student outside of counseling, or interview his teachers. Mr. Stevens, who was still supervising the counseling program, could not verify whether the general education group counseling had met Student's unique needs or if Student had benefited from that support.

56. Student continued to struggle with behavior. During his 11th and 12th grade years, he received 13 days of suspension due to serious behavior conflicts with peers, teachers, and school staff. The suspensions were in addition to the 13 disciplinary referrals, which normally resulted in detentions.

*The February 23, 2015 Amendment IEP*

57. District convened an amendment IEP team meeting for Student on February 23, 2015. District convened this meeting because Student had serious behavior conflicts with his physical education teacher, and school staff felt it was urgent to remove Student from that class.

58. In place of physical education, District offered Student a strategies class, which the IEP incorrectly described as specialized academic instruction. Ms. Valles was selected to teach the proposed strategies class. However, the strategies class was not an actual class. During the period that Student attended physical education, District offered for Student to go to Ms. Valles's classroom when she was teaching an unrelated English class. District's offer did not include Student participating in that English class. Rather, Student would sit at the back of the class and wait for Ms. Valles to take teaching breaks. Ms. Valles' English class had 30 students and no assistants. It was unclear when Ms. Valles would be able to take teaching breaks, or what Ms. Valles would do with Student when she was not engaged in teaching her regularly scheduled class. The offer was similar to a self-study, study hall class for Student, and did not constitute specialized academic instruction. Student's parent did not accept this offer. District did not offer any other changes to Student's IEP.

*The April 9, 2015 Amendment IEP*

59. On April 9, 2015, District convened its last amendment IEP team meeting for Student. Student was 17 years old and finishing his last semester of high school. The meeting was held because Student's parent had requested an IEP team meeting in February 2015. However, Parent was unable to attend the IEP meeting on April 9, 2015, and she did not consent to District holding this IEP team meeting without her.

60. District's IEP team met briefly. Student had still not passed the CAHSEE. District staff would help Student prepare to retake the exam, but did not specify what that help included, or when it would be provided. Similar to past IEP team meetings, there was no discussion of waiving the CAHSEE as a prerequisite for Student to graduate. District did not offer any modifications to Student's IEP.

61. District graduated Student at the end of the 2014-2015 school year, his senior year of high school. Student had not passed the CAHSEE, yet he graduated with a 2.84 grade point average.

## *The Teachers*

62. Several of Student's teachers testified during hearing. A summation of their testimony revealed that Student's teachers were not familiar with his IEP's, or his identified deficits. None had implemented any IEP goals. When Student passed classes, his grades were based upon his ability to turn in a sufficient number of assignments, or based upon modified grading of assignments and tests.

63. Some teachers, including Molly Otis, Jeremy Pietsch and Julie Bailey, did not find Student's classroom behavior markedly different than other students. Other teachers, like Student's 12th grade math teacher Mr. Hoelscher; 12th grade Spanish teacher Antonio Ramos; 11th grade English teacher; and 12th grade physical education teacher,<sup>13</sup> had become frustrated with Student's conduct while in class.

64. Mr. Ramos taught Student's general education Spanish class during the first semester for his senior year, at West Valley. Mr. Ramos had not been contacted by either Mr. Long or Mr. Weiss regarding Student, or provided a copy of Student's IEP. In fact, Mr. Ramos did not know that Student had an IEP. Mr. Ramos provided Student accommodations because he mistakenly believed that Student had a section 504 plan.<sup>14</sup>

65. Mr. Ramos was an experienced Spanish teacher who had been frustrated by Student's behavior in class. It was normal for Student to be late to class, or refuse to attend at all. When he did attend, Student refused to sit in his assigned seat, was inattentive, and responded negatively to instruction. Mr. Ramos frequently sent Student to a separate classroom to work alone. Due to his behavior, Student missed the majority of the classroom instruction for this course. Student passed the class with a "C", based upon his turning in a sufficient number of assignments, not based upon the content of the assignments or Student's knowledge of the class material.

66. Mr. Pietsch taught Student's general education history and Spanish classes during his junior year, at Tahquitz. The classes Mr. Pietsch taught were held before school, at 7:00 a.m., and were for pupil's who received home instruction. Student did not receive home instruction; he was in the home instruction classes because he had struggled in traditional general education classes. Student had already taken, and failed, the same history class the prior semester while in a regular classroom.

67. Mr. Pietsch did not provide direct instruction, but monitored each pupil's use of computer based programs, broken into different sections. At the end of each section, pupils were provided computer based quizzes. Pupils had three chances to pass each section,

---

<sup>13</sup> Student's 11th grade English teacher and 12th grade physical education teacher did not testify.

<sup>14</sup> An educational plan pursuant to section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 701 et seq.)

which included three separate versions of a quiz for each section. A pupil only had to pass one version to advance to the next section. The computer program would not let the pupil advance to the next section unless he/she passed by the third version of the quiz. However, Mr. Pietsch frequently used an override key to the computer program, which allowed his pupils to retake the same three quizzes repeatedly until he/she passed that section. Because of this modification to the course curriculum, Mr. Pietsch had never failed a student who had participated in his classes.

68. For written assignments, Mr. Pietsch corrected Student's work and then allowed him to resubmit the assignment after he had copied the answers. Mr. Pietsch then graded the corrected version, not the original work done by Student. On this basis, Student was able to pass the history class with a "B+," and the Spanish class with an "A-." Mr. Pietsch's modification of Student's grades did not stem from Student's IEP's; Mr. Pietsch was not familiar with Student's IEP's. Because of the modifications and the manner in which Mr. Pietsch conducted his classes, Student's passing grades were not a reliable indication of his academic abilities.

69. Vicki Pryor and Molly Otis taught Student's 12th grade general education English classes, which were entitled Expository Reading and Writing Course. Ms. Pryor taught Student while he attended West Valley, and Ms. Otis taught Student at Tahquitz. The Expository Reading and Writing Course was less rigorous than a traditional high school level English class. Rather than using literature or reading from books, pupils selected articles from magazines and newspapers for their reading assignments.

70. Ms. Pryor and Ms. Otis each modified Student's grades. Each permitted Student to retake tests, after they corrected the first version and provided Student the test answers, and only used the grade from the retaken test. For written assignments, Ms. Pryor and Ms. Otis each corrected Student's work and then allowed him to resubmit the assignment with the copied corrections. Each counted the grade for the corrected version, not the original work done by Student. On this basis, Student was able to pass Ms. Pryor's class with a "B," and Ms. Otis' class with an "A." Similar to Mr. Pietsch's modification of Student's grades, the English teachers' modifications did not stem from Student's IEP's; none of which permitted modifications for school-work or testing.

71. Each of Student's IEP's called for an unmodified diploma track curriculum, rather than a modified alternative track curriculum. Each IEP planned for Student to earn a regular high school diploma, rather than a certificate of completion. Modifications to school work and testing were therefore not permitted. Because various teachers frequently modified Student's grades for tests and assignments, his grades were not a reliable reflection of his understanding of the course material.

72. Julie Bailey taught Student's music appreciation class, a general education elective course he took during his senior year at Tahquitz. Ms. Bailey's class was an academically low class. The class was designed as a general education class for students who otherwise attended special education classes, so they could be mainstreamed during an

elective course. Ms. Bailey described her class as a “credit filler.” Student’s grades were based upon choosing a song once per week, and then answering the same eight questions about each song, using one-to-two sentence answers. Student enjoyed Ms. Bailey’s class and was compliant to her instruction. He was able to write simple sentences and sometimes read aloud during class. Student struggled with words that Ms. Bailey considered “big.” Student passed this class with an “A-.”

73. Ms. Davis also testified. Ms. Davis had not attended Student’s IEP team meetings, taught Student, or conducted any testing of Student. Ms. Davis was dismissive towards Student’s claims and conclusory in her opinions. Overall, she did not correlate Student’s disabilities with his academic or behavioral problems. She asserted that Student had done well in high school and, if he had not done well, it was not District’s fault; that fault arose from the noncooperation of Student’s parent. However, Ms. Davis offered no examples of Parent’s noncooperation. To the contrary, evidence showed that Parent participated during Student’s IEP team meetings, and she normally went along with District’s IEP recommendations. Similar to Mr. Weiss, Ms. Davis was not informed that District had an affirmative obligation to offer Student a FAPE regardless of what Student, or his parent, had or had not requested.

74. Ms. Davis did not believe that Student required behavior services in his IEP’s, because she did not believe that Student had an emotional disorder. Ms. Davis derived this conclusion, although Student had not been assessed in that area of deficit, and offered no support for her opinion. Ms. Davis’s opinion was less persuasive and contrary to concerns noted by school counselor Matt Bieber, school principal Dr. Ballard, and therapist Ms. Guizzo, who had all recommended that Student receive services for an emotional disorder. Moreover, Ms. Davis’s testimony demonstrated a misunderstanding that Student could only receive behavior services if he had a diagnosed emotional disorder. Student had been removed from classes, suspended, and had faced expulsion, due to behavior issues; all of which necessitated modifications to Student’s IEP, regardless if he had an emotional disorder.

75. Ms. Davis believed that Student’s academic performance was sufficient without special education or related services, as evidenced by his passing grades and timely graduation. Ms. Davis was not concerned that, per District testing, Student had failed to make any academic progress, and had regressed, during high school. Ms. Davis was not interested in how Student was able to receive passing grades in general education high school classes when he had a third grade reading ability. She did not know that, when Student had received a passing grade, it was because he had frequently received modified instruction. Had Ms. Davis conducted a perfunctory inquiry with Student’s teachers, she would have learned that Student’s passing grades were not a reliable indicator of his progress or abilities. For these reasons, Ms. Davis was not a persuasive witness. Her opinions and demeanor were reflective of District’s overall lack of care towards Student. Despite substantial evidence that Student required modifications to his IEP, that evidence was ignored at every turn and the same anemic education program was reoffered during the six IEP’s that were provided during the timeframe at hand.

*Dr. Jerry Turner's Assessment*

76. District hired Dr. Jerry Turner to conduct an independent psycho-educational evaluation during Student's last semester of his senior year, spring 2015.<sup>15</sup> Dr. Turner had been a licensed educational psychologist for over eight years. He received his doctorate in psychology and held two masters' degrees, in psychology and education. He had taught at the college, high school and middle school grades, and was in the process of becoming a Board Certified Behavior Analyst. District did not convene an IEP team meeting to review Dr. Turner's report with Student or his parent.

77. Dr. Turner's report primarily consisted of a records review. Based upon this review, Dr. Turner conducted an educational benefits analysis to determine whether Student had progressed over the past three years and whether his IEP goals had been appropriate. Dr. Turner thoroughly reviewed Student's educational file, but he did not conduct standardized testing for Student.

78. A summation of Dr. Turner's report and testimony was that Student failed to receive any benefit from his educational program, and had seriously regressed over the past three years. For example, when Dr. Turner compared Student's October 2013 IEP, which stated that Student was at the 11th grade level in math, to Student's October 2014 IEP, which stated Student was at the fifth grade level in math, he surmised that the only reasonable conclusion the 2014 IEP team could have held was that Student had suffered a traumatic brain injury and required significant modifications to his IEP. Yet, when confronted with this information, the District IEP team failed to offer any modifications to Student's educational program. District failed to offer any special education or related services, or even a math goal.

79. Student did not have an intellectual disability or a traumatic brain injury. Student did have a specific learning disability in reading, writing and math, with correlating disabilities in visual, phonological, and auditory processing. Dr. Turner persuasively testified that, given the nature of Student's disability, he had the ability to make one year's worth of educational progress each year, if he had been provided special education and related services. Student required goals in math, reading and writing, and special education

---

<sup>15</sup> District hired Dr. Turner at the request of Student's prior attorney. During the hearing, District did not raise as a defense to Student's Issue 1, failing to provide Student an appropriate psycho-educational evaluation, that it had already funded Dr. Turner's independent psycho-educational report. To the contrary, District's attorney Peter Sansom objected to Student's submission of Dr. Turner's report on the grounds that District had not been provided a copy of the report, District was not familiar with the report, and that District was prejudiced by its inclusion during the due process hearing. However, Ms. Davis testified that District was well aware of Dr. Turner's report. District had contracted with Dr. Turner to conduct the evaluation and Dr. Turner provided District a copy of the evaluation in July 2015.

and related services to attain those goals. District failed to provide Student appropriate goals and failed to provide Student the special education and related services that he needed to benefit from his education program.

80. Student also had a history of significant behavior problems in and around school. District's lack of IEP intervention did not bode well for Student and he frequently missed classroom instruction as a result of maladaptive behaviors. Rather, as reported by Dr. Turner, Student had required IEP services including a behavior support plan, group and individual counseling, and social skills classes.

81. This case was not complex. Student had disabilities that required special education services and District provided him none. Therefore, Dr. Turner's conclusion that Student had failed to receive an educational benefit, and had regressed during the time frame in dispute, was credible and was supported by a preponderance of evidence submitted for this matter.

82. In light of Student's unique needs, including various processing delays, Dr. Turner persuasively recommended Lindamood-Bell services for reading, writing and math. Lindamood-Bell was a private educational agency that could deliver compensatory education services. Student should receive those services until he attains, at a minimum, an eighth grade ability in reading, writing and math. Dr. Turner's testimony that Student required special education services was more persuasive than Mr. Weiss and Ms. Davis's testimony that Student did not require such intervention. Unlike Mr. Weiss, Dr. Turner was a competent and thoughtful therapist who was informed of research based services for students with specific learning disabilities. Unlike Ms. Davis, Dr. Turner persuasively correlated Student's disabilities, and lack of intervention services, to his failure to progress and subsequent regression.

83. Dr. Turner had not been paid to testify during the hearing because Student did not have sufficient funds. He normally charged \$150.00 per hour, and testified for two and a half hours.

## LEGAL CONCLUSIONS

### *Introduction: Legal Framework under the IDEA*<sup>16</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C.

---

<sup>16</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

§ 1400 et seq.; 34 C.F.R. § 300.1 (2006)<sup>17</sup> et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child’s IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court 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. *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 p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer Island*) [In enacting the IDEA, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B);

---

<sup>17</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

Ed. Code, § 56505, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, Student had the burden of proof on all issues.

### *Transfer of Educational Rights*

5. When a student who has been receiving special education services reaches the age of 18, all educational rights are transferred to the student, and the district shall notify the student and the parent of the transfer of rights. (Ed. Code, § 56041.5.) If no guardian or conservator has been appointed for the student, the student becomes a “parent” for purposes of special education law. (Ed. Code, § 56028, subd. (a)(2).) The local education agency shall provide any required notice of procedural safeguards to both the student and the student’s parents. (Ed. Code, § 56041.5.) In this matter, Student was an adult who authorized his parent to act on his behalf regarding his educational program.

### *Extended School Year*

6. In addition to special education instruction and services during the regular school year, school districts must provide extended school year services in the summer if the IEP team determines, on an individual basis, that the services are necessary for a child to receive a FAPE. (34 C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3).) California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for each individual with unique and exceptional needs who requires special education and related services in excess of the regular academic year. Pupils to whom extended school year services must be offered under section 3043:

“ . . . shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil’s educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.” (See also 34. C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3).)

7. Here, Student’s due process complaint asserted that District failed to address his needs during the extended school year. However, Student abandoned this claim during hearing and failed to provide any evidence in support of his need for extended school year services. Student therefore failed to meet his burden of proof that he was denied a FAPE because District failed to offer him extended school year services.

## *Assessment and Reassessment Standards*

8. Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child in all areas of suspected disability. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) After the initial assessment, a school district must conduct a reassessment of the special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) By this standard, the assessment in dispute in this case, District's 2014 Psychoeducational Report, was a reassessment of Student.

9. In conducting a reassessment, a school district must follow statutory guidelines that prescribe both the content of the assessment and the qualifications of the assessor(s). The district must select and administer assessment materials in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must also be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent district personnel must administer special education assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.)

10. In performing a reassessment, such as a triennial assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student, and to decide whether modifications or additions in the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).) In performing a reassessment, an educational agency cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability and in preparing the appropriate educational plan for the pupil. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).)

11. Persons who conduct assessments shall prepare a written report, as appropriate, of the results of each assessment. The report shall include, but not be limited to: (a) whether the pupil needs special education and related services; (b) the basis for that determination; (c) the relevant behavior noted during the observation of the pupil; (d) the relationship of that behavior to the pupil's academic and social functioning; (e) educationally relevant health and development, and medical findings; (f) for pupils with learning disabilities, the discrepancy between achievement and ability that cannot be corrected without special education services; (g) a determination concerning the effects of

environmental, cultural, or economic disadvantage, where appropriate; and (h) the need for specialized services, materials, and equipment for pupils with low incidence disabilities. (Ed. Code, § 56327.)

#### *District's Affirmative Obligation to Offer a FAPE*

12. Although development of an IEP is a team decision, it is the school district that is ultimately responsible for ensuring that a student is offered a FAPE. (*Letter to Richards*, 55 IDELR 107 (OSEP 2010).) It is the school district that has an affirmative duty to review and revise, at least annually, an eligible child's IEP. (*Anchorage School District v. M.P.* (9th Cir. 2012) 689 F.3d 1047 [2012 WL 2927758 at p. 5] (*Anchorage*); 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).) Similarly, the school district must conduct a reassessment of the pupil if it determines that the educational or related services needs of the pupil, including improved academic achievement and functional performance, warrant a reassessment. (Ed. Code, § 56381, subd. (a)(1).) Nothing in the IDEA makes these duties contingent upon parental cooperation with, or acquiescence in, the district's preferred course of action. (*Anchorage, supra*, 689 F.3d at p. 1055.) For example, if the parent does not consent to an assessment, the school district may file a request for a due process hearing to override the lack of consent and obtain an order requiring assessments. (Ed. Code, § 56381, subd. (f)(3).) School districts "cannot excuse their failure to satisfy the IDEA's procedural requirements by blaming the parents." (*Anchorage, supra*, 689 F.3d at p. 1055, citing *Target Range, supra*, 960 F.2d at p. 1485.) By this standard, District's defense, raised during the hearing and in its closing brief, that it did not provide Student assessments, special education, goals, or related services, because Student or his parent did not request such, is not well conceived or persuasive. District offers no legal authority that permits District to eschew its affirmative duties under the IDEA by blaming Student or his parent. (*Anchorage, supra*, 689 F.3d at p. 1055.)

#### *Issue 1: District's Psycho-educational Assessment*

13. Student correctly asserts that District's September 2014 triennial assessment was inappropriate and failed to meet all necessary requirements.

14. District had previously assessed Student in 2005, 2008 and 2011. District's previous testing identified Student with various disabilities that required reassessment. Utilizing the Woodcock Johnson-III Test of Academic Achievement, District examiners had identified Student with severe deficits in written expression, basic reading skills, reading comprehension, reading fluency, and math reasoning. Per the Comprehensive Test of Phonological Processing, District had identified Student with a severe phonological processing delay. District staff had utilized the Berry Buktenica Developmental Test of Visual-Motor Integration to find that Student had a visual processing disability. Per the Test of Auditory Perceptual Skills-Revised, District staff had identified Student with a serious

delay in auditory processing. District's 2011 assessment, along with Student's December 8, 2014 IEP, identified him with a sensory processing delay. District was therefore required to assess Student in the areas of reading; writing; math; visual processing; phonological processing; auditory processing; and sensory processing.

15. Information from Student's counselor Mr. Bieber, principal Dr. Ballard, and therapist Ms. Guizzo, suggested that Student had an emotional disorder. Mr. Bieber referred Student for mental health services in January 2014, and Dr. Ballard referred Student for mental health counseling in November 2014. In December 2014, Ms. Guizzo recommended that Student receive weekly, individual and pull out, mental health counseling while at school. Accordingly, District was obligated to assess Student for an emotional disorder.

16. Student's conduct suggested that he had behavioral deficits. Due to behavior, Student had twice, on March 14, 2014, and January 13, 2015, been referred by District staff for special education mental health counseling for anger management. His behavior prevented him from accessing at least his 11th grade English class, his 12th grade physical education classes and, sometimes, his 12th grade Spanish class. Behavior also resulted in suspensions and exposed him to expulsion. Per Student's October 2, 2013, and October 3, 2014 IEP's, Student's behavior impeded the learning of himself or others. Therefore, District was also obligated to assess Student in the area of behavior.

17. In sum, to meet Student's unique needs, District's 2014 triennial assessment was required to assess him for deficits in reading; writing; math; auditory processing; visual processing; phonological processing; sensory processing; behavior; and emotion. District was therefore obliged to perform a comprehensive triennial evaluation with assessors in various areas of expertise.

18. However, for Student's 2014 triennial assessment, District failed to assess Student in the areas of auditory processing; visual processing; phonological processing; sensory processing; behavior; and emotion. District's assessor, Mr. Weiss, elected to forego performing assessments that were necessary to obtain such information concerning Student's deficits, in violation of federal and state law. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).) District was therefore unable to analyze whether Student had progressed, regressed, or remained the same in the areas of phonological processing; visual processing; auditory processing; and sensory processing. Despite substantial evidence that Student had suspected deficits in behavior and emotion, District had never assessed Student in those areas.

19. Mr. Weiss limited his report to the testing completed by Ms. Long. Ms. Long did not testify and there was no evidence provided regarding Ms. Long's qualifications to conduct the assessment. Ms. Long utilized a sole criterion, the Wide Range Achievement Test, a brief academic assessment. This testing found that Student had failed to make academic progress, and had regressed, in reading, writing, and math. After reviewing Ms. Long's testing, Mr. Weiss did not interpret how Student's reading, writing, or math delays impacted his academic and social functioning. He failed to describe the discrepancy

between achievement and ability that could not be corrected without special education services. He did not interpret or analyze Ms. Long's testing regarding why Student had regressed since District's 2011 testing. Mr. Weiss failed to recommend further testing to determine how to remediate such regression. Mr. Weiss was unfamiliar with related services, such as specialized academic instruction, that could remediate Student's disabilities, and he recommended none.

20. Mr. Weiss's testimony that he had reviewed Student's records as part of his assessment was not credible. Mr. Weiss was not familiar with Student's identified areas of deficit, other than in reading comprehension, which he mistakenly referred to as Student's area of IEP eligibility. He was not familiar with Student's history of behavior problems, or that Student had been referred by District staff for mental health intervention prior to his assessment, in January 2014; or again, just following his assessment, in November 2014.

21. Mr. Weiss' testimony that his consultation with West Valley school counselor Trent Long was sufficient to obtain information from Student's teachers was similarly unpersuasive. Student had just transferred to West Valley from Tahquitz, less than one month prior to his September 2014 assessment. Yet, Mr. Weiss did not contact any teacher or staff from Tahquitz. Instead, he relied solely from information obtained from Mr. Long. Yet, Mr. Long had been Student's case carrier for less than one month, and had not consulted with Student's teachers. Mr. Long's support was limited to brief meetings with Student, not his teachers. West Valley teachers, including Mr. Ramos and Mr. Hoelscher, credibly testified that they had not consulted with Mr. Long regarding the assessment. In fact, Mr. Ramos was not aware that Student had an IEP. Mr. Weiss also failed to meet with or observe Student, or to meet with his parent. Consequently, Mr. Weiss failed to meet his statutory duty to review existing assessment data, including information provided by the parents and observations by teachers and service providers. Based upon this failure, Mr. Weiss was unable to identify any additional information that was needed by the IEP team to determine the present levels of academic achievement and related developmental needs of Student, and to decide whether modifications or additions in Student's special education program were needed. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305; Ed. Code, § 56381, subd. (b)(1).); (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).)

22. It is also true that in performing its reassessment, District only used a single measure, the Wide Range Achievement Test, as the sole criteria for determining whether the Student was a child with a disability and in preparing his educational plan, in violation of its statutory obligation to use a variety of measures. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).)

23. District's failure to appropriately assess Student by failing to review existing data, including information provided by Student's parent and observations by teachers and service providers, and by using a single measure for assessment, constitutes a violation of the IDEA. District's failure to assess Student's delays in auditory processing; visual processing; phonological processing; sensory processing; behavior; and emotion, also constitutes a procedural violation of the IDEA. (*R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.* (9th

Cir. 2007) 496 F.3d 932, 940 (“we have, more often than not, held that an IDEA procedural violation denied the child a FAPE.”.) A procedural violation of the IDEA constitutes a denial of a FAPE “only if the violation: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits.” (Ed. Code, § 56505(f)(2); *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484.) Here, Student’s maladaptive behaviors resulted in off-task behavior and his removal from the classroom on many occasions, thereby causing him to miss instruction. Student’s academic delays were intertwined with his processing delays, and impacted his ability to progress in a manner that was commensurate with his same aged peers without special education or related services. Therefore, District’s failure to assess Student in behavior, emotion, and visual, phonological, auditory, and sensory processing, deprived him of educational benefits, and, accordingly, District denied Student a FAPE on that basis. (*Carrie I. ex rel. Greg I. v. Dep’t of Educ., Hawaii* (D.Haw. 2012) 869 F.Supp.2d 1225, 1247 (“The lack of assessments alone is enough to constitute a lost educational opportunity.”).)

24. For the foregoing reasons, Student met his burden of showing that District’s 2014 psychoeducational assessment denied him a FAPE.

#### *Issues 2 and 4: Related Services*

25. Student complained that District unlawfully failed to offer him various related services, including academic and behavior support services, and for reading intervention. District avers that although Student was eligible for an IEP, he did not require special education or related services to benefit from his educational program.

26. Related services include specialized academic instruction for reading, writing, and math, and services for auditory processing, visual processing, phonological processing, and occupational therapy services, and other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1527 (*Union*).) Related services shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.” (Ed. Code, § 56363, subd. (a).)

#### *Student’s Grades*

27. District relied almost exclusively on Student’s passing grades as evidence that Student did not require special education or related services to receive an educational benefit.

28. District argument fails on several levels. First, a snapshot of Student’s grades during the October 3, 2013 IEP, when Student was beginning his junior year, showed that Student had failed five high school classes, and received several “D’s.” Just prior to the October 2013 IEP team meeting, Student had failed his science and history classes, and

received a “D-“ in his math class. Student did not have the reading, writing, or math abilities to benefit from those general education classes without special education services. Rather than offer special education services, District had Student repeat math, in a lower math class, and had Student repeat history in a less rigorous home instruction class. For English, Student was placed in a less rigorous expository course that used magazine articles instead of books. Those changes occurred outside of Student’s IEP and illustrated District’s knowledge that Student struggled academically at that time.

29. Second, District overlooks that a child who receives passing grades is still entitled to special education and related services to meet that child’s unique needs. (*M.P. v. Santa Monica Malibu Unified School District*, (C.D. Cal. 2008) 633 F.Supp. 2d 1089) Here, there is no dispute that Student qualified for an IEP under the eligibility category specific learning disability. For special education eligibility, specific learning disability is a disorder characterized by a severe discrepancy between ability and achievement to a degree that the student cannot be adequately served in regular classes without the provision of special education and/or related services. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a); Ed. Code, § 56026.) A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, which manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (20 U.S.C. § 1402(30)(A); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd.(a).) District overlooks that Student required special education or related services due to the nature of his disability. If District did not believe that Student required special education or related services, District should have filed to exit Student from special education, rather than make the decision not to provide special education or related services.

30. Finally, a preponderance of the evidence showed that the passing grades Student received were frequently modified and were not a reliable indicator of Student’s academic abilities. District did not provide Student an unmodified general education curriculum, as called for in his IEP’s.

31. Student's grades were so thoroughly modified that they bore almost no resemblance to his academic abilities. Outside of the IEP process, District placed Student in home study Spanish and history classes, taught at school, that were less rigorous than regular courses. Student’s teacher for those classes, Mr. Pietsch, testified that he routinely simplified Student's curriculum by allowing him to repeat tests in a manner that was not permitted by the course program. For written assignments, Mr. Pietsch corrected Student’s work and then allowed him to resubmit the work after he had copied the answers. Mr. Pietsch then graded the corrected version, not the original work done by Student. On this basis, Student was able to receive passing grades. Vicki Pryor and Molly Otis, each taught Student’s 12th grade general education English classes, the Expository Reading and Writing Course, which was less rigorous than a traditional high school level English class. Yet, Student still struggled. Ms. Pryor and Ms. Otis each permitted Student to retake tests, after they corrected the first version and provided Student the test answers, and only used the grade from the retaken test. For written assignments, Ms. Pryor and Ms. Otis each corrected Student’s work and then allowed him to resubmit the assignment with the copied corrections. Each counted the grade

for the corrected version, not the original work done by Student. Student was far below grade level in his ability to read and write, yet was able to pass each English class with high grades because of those modifications.

32. District also knew of Student's academic struggles during the October 2014 IEP team meeting. Student's math and science teachers had informed the team that Student was not equipped academically for high school level courses. In addition, Student had, again, failed the CAHSEE. Rather than attempt to remediate Student's deficits with special education and related services, District ignored Student's needs and merely offered to remove Student from core academic classes to less difficult, general education elective classes. Removing Student from math and science meant that he could not attend a four year college following high school, which was the goal of his individualized transition plan. Although the individualized transition plan was not an issue for the hearing, changes to Student's educational program that were incongruent with this plan further evidenced Student's need for special education and related services.

33. Most egregiously, District was in receipt of the results of its triennial testing during the October 2014 IEP team meeting. District's testing was the best evidence of Student's academic abilities at that time. The testing revealed that Student had failed to make any academic progress since he was last assessed by District in September 2011, and had regressed in every area tested. Student had regressed from one-to-seven years delayed in reading, writing, and math in 2011, to seven-to-nine years delayed in those same areas in 2014. Given this data, District should have significantly modified Student's educational program. Yet, District made no changes to Student's IEP. It continued to offer the same school counselor service, at 10 minutes per week. The school counselor did not provide instruction to Student or consult with Student's teachers. Rather, the school counselor met briefly with Student to remind him that he had accommodations. The school counselor did not follow up with Student's teachers to find out how Student was performing in class. This service, although listed as specialized academic instruction, did not constitute instruction, special education, or a related service.

34. District repeated its failure to offer Student special education and related services in each IEP offered during the time frame in dispute, including IEP's held in October 2013, October 2014, December 2014, January 2015, February 2015, and April 2015.

35. Student's expert Dr. Turner persuasively testified that Student required special education and related services to benefit from his educational program. Student was not intellectually disabled, but he did have specific learning disabilities in reading, writing and math. Student's academic delays were intertwined with auditory, visual, sensory, and phonological processing delays. As a result of his disability, Student had the ability to make year-for-year progress, had he been provided special education and related services. Dr. Turner's testimony that a variety of research based related services existed for students with specific learning disabilities, was more persuasive than Mr. Weiss' testimony that no

such services existed. Dr. Turner persuasively recommended specialized academic instruction, the Lindamood-Bell program, to meet Student's unique needs in reading, writing and math.

36. Based on the foregoing, a preponderance of evidence showed that District denied Student a FAPE by failing to provide academic support services and services for reading intervention. Student required specialized academic instruction for reading, writing, and math to meet his unique needs and to benefit from his educational program.

#### *Student's Behaviors*

37. Student also contends that District's failure to offer behavior support in his IEP's denied him a FAPE. District argues that Student did not require behavior support in his IEP's, because his behaviors did not impact his ability to access his educational program.

38. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

39. District points out that some teachers did not find Student's classroom behavior markedly different than other students. However, that evidence was outweighed by a preponderance of evidence showing that Student's behaviors impeded the learning of himself or others, warranting an assessment and services. (20 U.S.C. § 1414(a)(2)(A); 20 U.S.C. § 1414(d)(3)(B)(i).)

40. For example: 1) Student's behaviors impeded his learning in Mr. Hoelscher's math class and Mr. Ramos's Spanish class; 2) School staff attempted to remove Student from his 11th grade English and his 12th grade physical education classes altogether due to behavior conflicts with those teachers; 3) Discipline records indicated that Student was defiant, disrupted class, fought with students and staff, cheated, and was confrontational. By the end of his junior year, he had been referred for discipline 13 times by seven different teachers; 4) In addition to the 13 discipline referrals, Student was suspended 13 days during his junior and senior years, due to more serious behavior conflicts with students, teachers, and school staff; 5) In December 2014, Student faced an expulsion due to a serious behavior incident with school staff; 6) School staff, including Mr. Bieber and Dr. Ballard, recommended that Student receive mental health intervention in January 2014, and November 2014, because of behavior; 7) District staff referred Student for special education counseling for anger management on March 14, 2014, and January 13, 2015; and 8) Student's October 2, 2013, and October 3, 2014 IEP's, stated that his behavior impeded the learning of himself or others.

41. Ample evidence showed that Student had a significant history of behavior problems at school that warranted IEP intervention. Student's maladaptive behaviors resulted in off-task behavior and removal from the classroom on many occasions, thereby

causing him to miss instruction. In light of the information available at the time Student's 2013, 2014, and 2015 IEP's were developed, it was not reasonable to forego IEP based behavior services. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

42. District's IEP teams ignored Student's behavioral needs and failed to offer any behavior supports during the October 2, 2013 IEP, October 3, 2014 IEP, December 8, 2014 manifestation determination review IEP, February 23, 2015 IEP, and April 9, 2015 IEP. District offered a single behavior goal during the January 13, 2015 IEP. The goal, for Student to request time away rather than engage in the conflict, was not based upon an assessment of Student's unique needs, was not supported by related services, and was far below what Student required. Rather, Student required the development of a positive behavior support plan, IEP based group and individual counseling, and social skills classes, to receive a FAPE.

43. Based upon the foregoing, a preponderance of evidence showed that District denied Student a FAPE by failing to provide Student academic and behavior services, and services for reading intervention.

### *Issue 3: The IEP Goals*

44. Student alleged that the goals contained in his IEP's failed to address all areas of need. District disputes this claim and asserts that the goals it developed met all statutory requirements and adequately addressed Student's needs.

45. In developing the IEP, the IEP team is mandated to consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.) Here, District had identified Student with needs in reading, math, writing, and behavior, prior to each IEP that was offered during the time frame in dispute.

46. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code,

§ 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.) By this standard, Student's annual IEP's of October 2, 2013, and October 3, 2014, were required to contain a statement of measurable annual goals for reading, writing, math, and behavior.

47. The weight of the evidence supports Student's contention that his goals were inadequate.

48. Student's annual IEP of October 2, 2013, offered three goals. Two goals were in the area of transition, one for writing. Goal one, for transition, was for Student to obtain a grade of "C" or better by submitting his assignments 100 percent of the time. Goal two, in writing, was for Student to write a four-to-five paragraph essay, including a thesis statement and support within the body and conclusion paragraphs, with 80 percent accuracy. Goal three, also in transition, was for Student to obtain weekly grades from his teachers.

49. The writing goal was the exact same goal from his 2012 IEP, which indicated that he had not met that goal. However, Student's failure to meet a prior annual goal indicated that his educational program required modification. It does not prove that the goal itself was inappropriate. Per District's most recent testing, the 2011 triennial assessment, Student had a disability in writing, and the goal offered was a measurable way of addressing that disability. There was no evidence offered by Student that the writing goal was inappropriate.

50. The remaining goals failed to address Student's academic delays in reading and math. In addition to serious delays in writing fluency and writing samples, per District's 2011 testing, Student was seriously delayed in basic reading skills; reading fluency; reading comprehension; math fluency; applied problems; spelling; broad reading; and broad math. When compared to his same aged peers, Student was between one-to-seven years delayed in every academic area tested. For each area that Student had an identified need, the IEP team was required to develop measurable annual goals that were based upon Student's present levels of academic achievement and functional performance, and which the Student had a reasonable chance of attaining within a year. Student therefore required, at a minimum, appropriate goals in reading and math, in addition to the writing goal.

51. Moreover, the regression from an Algebra 2 course to an Algebra 1 course in 2013 was evidence that Student was not progressing and required intervention. A math goal in 2013 would have ensured tracking and progress monitoring.

52. For reasons already found in the Legal Conclusions, Student's behavior also impeded his learning. Student was defiant, off-task, inattentive, and disruptive while in class. He frequently missed instruction as a result of behavior problems. However, the October 2013 IEP failed to include behavior services or a behavior goal. Student's behaviors continued to deteriorate following this IEP team meeting; he was removed from classes, missed classes, was suspended, and risked expulsion, due to behavior problems, following that IEP offer. He therefore also required a behavior goal.

53. Consequently, a preponderance of evidence shows that Student was denied a FAPE because the October 2013 IEP failed to offer measurable annual goals in reading, math, and behavior.

54. Student's next annual IEP was offered on October 3, 2014. The October 2014 IEP offered Student one goal, in the area of reading comprehension. Student was to generate relevant questions on issues when given grade level work in literature. No person was designated responsible to help Student attain this goal and no services were offered to support the goal. Based upon District's most recent testing, that was completed just one month prior to the IEP offer, Student was reading at below a third grade level. Consequently, the reading goal for Student to read 12th grade level work in literature, was not based upon Student's present levels of academic achievement and functional performance. It was therefore not an appropriate reading goal.

55. Per District's recent testing in September 2014, Student also continued to have severe delays in writing and math at the time of the October 2014 IEP team meeting. Yet, District failed to offer any goals in those areas.

56. Student demonstrated a clear need for reading, writing and math goals during the 2013 and 2014 IEP meetings. However, other than the writing goal in 2013, no goals were developed either year. Student's regression in reading, writing, and math, evidenced that Student required IEP intervention.

57. Student also demonstrated a struggle in science class, which went unaddressed in the goals and services documented in each IEP.

58. For reasons already found in the Legal Conclusions, behavior continued to impede Student's learning during the 2014-2015 school year. Student missed classes, lost instruction, was suspended, and risked expulsion, due to behavior. Yet, his annual IEP failed to offer behavior goals or services.

59. Had district provided appropriate goals, it could have ensured tracking and progress in Student's areas of need. District failed to do so, and Student regressed academically and behaviorally. As a consequence of this failure, District's educational program failed to yield an educational benefit for Student.

60. For the foregoing reasons, a preponderance of the evidence shows that District's failure to offer appropriate annual goals denied Student a FAPE.

### *Remedies*

61. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

62. An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.)

63. In an appropriate case an ALJ may grant relief that extends past graduation, age 22, or other loss of eligibility for special education and related services as long as the order remedies injuries the student suffered while he was eligible. (*Maine School Admin. Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *San Dieguito Union High School Dist. v. Guray-Jacobs* (S.D.Cal. 2005, No. 04cv1330) 44 IDELR 189, 105 LRP 56315 [same]; see also *Barnett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.App. 124, p. 2 [nonpub.opn][relief appropriate beyond age 22].)

64. The IDEA does not require compensatory education services to be awarded directly to a student, so school district staff training can be an appropriate remedy. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy violations that may benefit other pupils. (*Ibid.*) (*Student v. Reed Union School District*, (Cal. SEA 2008) 52 IDELR 240 [109 LRP 22923; Cal.Ofc.Admin.Hrngs. Case No. 2008080580] [requiring training on predetermination and parental participation in IEP's]; *Student v. San Diego Unified Sch. Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring training regarding pupil's medical condition and unique needs].)

65. District denied Student a FAPE during the 2014-2015 school year, by failing to provide an appropriate psychoeducational assessment. Student did not request a specific remedy for this claim. However, Dr. Turner's testimony and independent report was helpful in analyzing this issue, and Student was unable to pay Dr. Turner for his testimony. In light of District's agreement to fund Dr. Turner's independent report, and failure to review the

report with Student, it is therefore equitable for District to fund Dr. Turner's testimony regarding his report during the hearing. Dr. Turner charged \$150.00 per hour. He testified for two and a half hours and his office, located in Hemet, required him to travel approximately 15 minutes to and from the hearing. District shall therefore pay Dr. Turner \$450.00.

66. District denied Student a FAPE during the 2013-2014 and 2014-2015 school years, by providing IEP's that failed to provide appropriate related services and goals for reading, writing, math, and behavior. As a remedy, Student requested 180 hours of Lindamood-Bell services in the areas of reading, writing, and math; and 120 hours of private counseling services. Student's request corresponds with District's denial of FAPE and the evidence submitted in this matter, including Dr. Turner's testimony and report. It is therefore equitable to order that District fund 180 hours of instructional services by Lindamood-Bell or from a nonpublic agency selected by Student or his parent; and 120 hours of counseling services by a nonpublic agency selected by Student or his parent.

67. The evidence established that District committed these violations based, in part, upon a systemic misunderstanding of its obligations to special education students. There is therefore a need to have District staff trained in these areas. Accordingly, District is ordered to provide training to special education staff who act as assessors and IEP team administrative designees, in the areas of requirements and best practices for ensuring that appropriate assessments, goals, and services are offered for pupil's with specific learning disabilities. The training shall be provided by a nonpublic agency, and shall be a minimum of six hours in length.

## ORDER

1. Within 30 calendar days of this Decision, District shall pay \$450.00 to Dr. Jerry L. Turner.
2. Within 30 calendar days of this Decision, District shall contract with Lindamood-Bell, or a nonpublic agency selected by Student or his parent, to provide 180 hours of instructional services, to be directly funded by District. District shall also fund the cost for any assessments, materials, or other fees, associated with those services. Student shall have three years from the date District contracts with Lindamood-Bell, or the nonpublic agency selected by Student or his parent, to utilize those services.
3. Within 30 calendar days of this Decision, District shall contract with a nonpublic agency selected by Student or his parent, to provide 120 hours of counseling services to Student, to be directly funded by District. District shall also fund the cost for any assessments, materials, or other fees, associated with those services. Student shall have three years from the date District contracts with the nonpublic agency to utilize those services.

4. Within 30 calendar days of this Decision, District shall contract with a nonpublic agency to provide six hours of training to District special education staff who act as assessors and IEP team administrative designees, concerning requirements and best practices for providing appropriate assessments, goals, and services for pupil's with specific learning disabilities. This training shall be completed by October 1, 2016.

5. Student's remaining requests for relief are denied.

#### PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: Student prevailed on each issue heard and decided, to the extent they pertained to the 2013-2014 and 2014-2015 regular school years. Student did not prevail on issues to the extent they pertained to the 2013-2014 and 2014-2015 extended school years.

#### RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56506, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: April 6, 2015

\_\_\_\_\_  
/s/  
PAUL H. KAMOROFF  
Administrative Law Judge  
Office of Administrative Hearings