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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

J.E.,

Plaintiff,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, OFFICE OF
ADMINISTRATIVE HEARINGS et al.,

Defendants.

CV 07-04741 ABC (PLAx)

ORDER AFFIRMING ADMINISTRATIVE
LAW JUDGE DECISION

I. INTRODUCTION AND BACKGROUND

The Individuals with Disabilities Act (20 U.S.C. §§ 1400 et seq.), referred to as the IDEA, guarantees all disabled children a free appropriate public education. Petitioner, a student with the Los Angeles Unified School District ("District") who suffers from profound hearing loss, claims that he was denied an appropriate public education from June 2002 through July 2006.

During this period, Petitioner progressed through the first to fourth grades where his educational performance often fell below that

1 of his peers. As relevant to this period, the District held
2 individualized education program meetings on January 11, 2002, June 7,
3 2002, December 18, 2002, December 12, 2003, November 23, 2004, March
4 2, 2005, September 26, 2005, December 9, 2005, January 13, 2006, and
5 February 17, 2006. At these meetings, the District evaluated
6 Petitioner's educational needs and formulated various courses of
7 action to address those needs.

8 Petitioner's parents, who are obviously devoted both to
9 Petitioner and to securing him the best education possible, were
10 heavily involved in monitoring Petitioner's progress and participated
11 in the District's educational assessment and planning. Concerned
12 about Petitioner's education, Petitioner's parents enlisted the help
13 of Rodney Ford, a special education advocate who served as an advocate
14 for Petitioner. In 2005, Petitioner's parents questioned the approach
15 taken by the District, filed a complaint against the District seeking
16 due process/mediation, and requested an Independent Educational
17 Evaluation. The evaluation was initially delayed due to some
18 communication issues concerning the District's ability to discuss
19 petitioner's case with Ford, but was eventually conducted by Robert
20 Good Patterson, Psy.D. in late 2005. In addition, evaluations were
21 conducted by speech language pathologist Judy Nelson, speech
22 pathologist Monica Chin and school psychologist Laura Interiano.

23 Ultimately, in early 2006, the District adopted some, but not
24 all, of the recommendations of Patterson. However, after formulating
25 Petitioner's educational plan, the District was initially unable to
26 implement a home-teaching component due to the inability to find an
27 available at-home teacher. The District has offered compensatory
28 services to cover this delay.

1 On July 21, 2006, Petitioner, still dissatisfied with the
2 education provided by the District, amended his complaint. The matter
3 was heard before Administrative Law Judge Glynda B. Gomez (the "ALJ")
4 in spring of 2007. The ALJ held hearings over twelve days and issued
5 a 32 page opinion ("ALJ Decision") wherein she denied all relief
6 sought by Petitioner. Petitioner then appealed the ALJ Decision. It
7 is that appeal which is currently before this Court and which is the
8 subject matter of this ruling. As discussed in detail below, the
9 Courts **AFFIRMS** the ALJ Decision.

10 **II. LEGAL STANDARD**

11 **A. THE IDEA**

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

22 The primary tool for achieving the goal of providing a FAPE to a
23

24 ¹"Special education" is defined as instruction specially designed to
25 meet a disabled student's unique needs, at no cost to parents, whether it
26 occurs in the classroom, at home, or in other settings. 20 U.S.C.
§ 1401(29); Cal. Educ. Code § 56031.

27 ²"Related services" include developmental, corrective, and supportive
28 services, such as speech-language services, needed to assist a disabled
child in benefitting from education, and to help identify disabling
conditions. 20 U.S.C. § 1401(26); Cal. Educ. Code § 56363.

1 disabled student is the individualized education program ("IEP"). Van
2 Duyn ex rel. Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 818 (9th
3 Cir. 2007). An IEP is a written statement containing the details of
4 the individualized education program for a specific child, which is
5 crafted by a team that includes the child's parents and regular and
6 special education teachers, a representative of the local education
7 agency, and, whenever appropriate, the child. 20 U.S.C. § 1401(14),
8 § 1414(d)(1)(B). An IEP must contain, among other things: (1)
9 information regarding the child's present levels of performance; (2) a
10 statement of measurable annual goals; (3) a statement of the special
11 educational and related services to be provided to the child; (4) an
12 explanation of the extent to which the child will not participate with
13 non-disabled children in the regular class; and (5) objective criteria
14 for measuring the child's progress. 20 U.S.C. § 1414(d)(1)(A).

15 The Act contains numerous procedural safeguards to ensure that
16 the parents or guardians of a disabled student be kept informed and
17 involved in decisions regarding the child's education. 20 U.S.C.
18 § 1415. As part of this procedural scheme, the local educational
19 agency must give parents an opportunity to present complaints
20 regarding the provision of a FAPE to the child. 20 U.S.C.
21 § 1415(b)(6). Upon the presentation of such a complaint, the parent
22 or guardian is entitled to an impartial due process administrative
23 hearing conducted by the state or local educational agency. 20 U.S.C.
24 § 1415(f).

25 **B. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS**

26 The IDEA provides that a party aggrieved by the findings and
27 decision made in a state administrative due process hearing has the
28 right to bring an original civil action in federal district court. 20

1 U.S.C. § 1415(i)(2). The party bringing the administrative challenge
2 bears the burden of proof in the administrative proceeding. Schaffer
3 ex rel. Schaffer v. Weast, 546 U.S. 49, 62 (2005). Similarly, the
4 party challenging the administrative decision bears the burden of
5 proof in the district court. Hood v. Encinitas Union Sch. Dist., 486
6 F.3d 1099, 1103 (9th Cir. 2007).

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

10 In any action brought under this paragraph the
11 court -- (i) shall receive the records of the
12 administrative proceedings; (ii) shall hear
13 additional evidence at the request of a party; and
14 (iii) basing its decision on the preponderance of
15 the evidence, shall grant such relief as the court
16 determines is appropriate.

17 20 U.S.C. § 1415(i)(2)(C).

18 Under the IDEA, complete de novo review is not appropriate.
19 Amanda J. ex rel. Annette J. v. Clark County Sch. Dist., 267 F.3d 877,
20 887 (9th Cir. 2001). "[T]he IDEA does not empower courts to
21 substitute their own notions of sound educational policy for those of
22 the school authorities which they review." Ojai Unified Sch. Dist. v.
23 Jackson, 4 F.3d 1467, 1471 (9th Cir. 1993) (citations and internal
24 quotation marks omitted). The statute has been interpreted as
25 requiring that "due weight" be given to the administrative
26 proceedings. Board of Educ. of the Hendrick Hudson Central Sch. Dist.
27 Westchester County v. Rowley, 458 U.S. 176, 206 (1982); Van Duyn, 502
28 F.3d at 817. Just how much weight is "due" is a question left to the

1 court's discretion. Gregory K. v. Longview Sch. Dist., 811 F.2d 1307,
2 1311 (9th Cir. 1987). In exercising this discretion, a "district
3 court shall accord more deference to administrative agency findings
4 that it considers 'thorough and careful.'" L.M. ex rel. Sam M. v.
5 Capistrano Unified Sch. Dist., 538 F.3d 1261, 1267 (9th Cir. 2008)
6 (quoting Capistrano Unified Sch. Dist. v. Wartenberg, 59 F.3d 884, 892
7 (9th Cir. 1995)).

8 A hearing officer's findings are treated as "'thorough and
9 careful' when the officer participates in the questioning of witnesses
10 and writes a decision 'contain[ing] a complete factual background as
11 well as a discrete analysis supporting the ultimate conclusions.'" R.B.,
12 ex rel. F.B. v. Napa Valley Unified Sch. Dist., 496 F.3d 932,
13 942 (9th Cir. 2007) (quoting Park ex rel. Park v. Anaheim Union High
14 Sch. Dist., 464 F.3d 1025, 1031 (9th Cir. 2006)). A high degree of
15 deference is warranted because "if the district court tried the case
16 anew, the work of the hearing officer would not receive 'due weight'
17 and would be largely wasted." Wartenberg, 59 F.3d at 891.

18 Ultimately, the "court's inquiry . . . is twofold. First, has
19 the State complied with the procedures set forth in the Act? And
20 second, is the individualized educational program developed through
21 the Act's procedures reasonably calculated to enable the child to
22 receive educational benefits? If these requirements are met, the
23 State has complied with the obligations imposed by Congress and the
24 courts can require no more." Rowley, 458 U.S. at 206-07.

25 III. DISCUSSION

26 Petitioner complains of various errors, both in the ALJ's
27 Decision, and in the underlying actions taking by the District. The
28 relevant period under review is from June 19, 2002 through July 21,

1 2006. (ALJ Decision at 2.) J.W. ex rel. J.E.W. v. Fresno Unified
2 Sch. Dist., 570 F. Supp. 2d 1212, 1221-22 (E.D. Cal. 2008) ("The
3 applicable statute of limitations for Plaintiff's IDEA claim is three
4 years from the date of the filing of the due process request.").
5 Generally, the allegations are that Petitioner was not properly
6 assessed, or Petitioner's programs were not properly implemented, or
7 the ALJ made various errors in weighing the evidence. These alleged
8 errors can be roughly categorized into six groups: 1. "Assessment
9 Errors" concerning the evaluations of Petitioner; 2. "Methodology
10 Errors" regarding the appropriate methodology to address Petitioner's
11 needs; 3. "Amplification Device Errors" relating to Petitioner's need
12 for amplification devices; 4. "Credibility Errors" concerning the
13 weight given by the ALJ to the testimony of various witnesses; 5.
14 "Implementation Errors" regarding the District's failure to implement
15 recommended programs; and 6. an "Evidentiary Error" arising from the
16 exclusion of one document from the record. Each is discussed below.

17 However, before addressing the alleged errors, the Court notes
18 that the ALJ's decision warrants substantial deference. At the
19 hearings in this case, the ALJ was an active participant, often
20 questioning witnesses, asking follow-up questions, and clarifying
21 testimony. (See, e.g., March 15, 2007 Tr. at 66:1-6; March 22, 2007
22 Tr. at 112:1-13.) She issued a lengthy 32-page opinion with detailed
23 factual findings. The reasoning in her decision reflected her
24 thorough understanding of the complexities of the case. Accordingly,
25 her careful decision here is entitled to substantial weight. It is in
26 light of this deference that the Court conducts its analysis.

27 **A. ASSESSMENT ERRORS**

28 Petitioner claims that he and his needs were not properly

1 assessed by the District. Petitioner claims that he should have been
2 assessed in receptive and expressive language prior to 2005. (Opening
3 Br. (Docket No. 22) at 3.) In addition, Petitioner argues that he
4 should have been assessed in academic areas, particularly math,
5 reading, and writing, prior to 2005. (Opening Br. at 8.) In contrast
6 to Petitioner's allegations, the ALJ found that Petitioner had been
7 assessed in these areas prior to 2005. (ALJ Decision at 29-30.) The
8 record supports the ALJ's finding.

9 As to receptive and expressive language, neither Petitioner nor
10 the District clearly define what is meant by these terms. The Court
11 will presume that receptive language relates to one's ability to hear
12 and decipher linguistic information and that expressive language
13 refers to one's ability to convey linguistic information. (See March
14 9, 2007 Tr. at 97:18-98:4 (Resource Teacher Teresa Moren stating that
15 "receptive is being what you hear and expressive what you say".)
16 Although the precise terms "expressive" and "receptive" are not always
17 used, Petitioner was clearly assessed in these areas. (See e.g., Ex.
18 H³ [Jan. 11, 2002 IEP⁴] at H2 (with goal achievement analyses in areas
19 of "language" and "speech reading"), H4B (assessing "Present Level of
20 Performance" for "Language"), H9 (setting "Language" goal that
21 Petitioner "will increase expressive language skills to include 100
22
23
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25 ³Citations to exhibits with alphabetical identifiers refer to
26 Plaintiff's Evidence at Hearing; exhibits with numerical identifiers refer to
27 Defendant's Evidence at Hearing. (See Docket No. 21 (Notice of Manual
Filing).)

28 ⁴Although the meeting date for this IEP was outside the limitations
period, it was the active IEP into the beginning of the period at issue.

1 new words. . . .").)⁵

2 Likewise, Petitioner was assessed in the areas of reading, math
3 and writing. (See e.g. Ex. H [Jan. 11, 2002 IEP] at H2 (with goal
4 achievement analyses in "Math," "Reading," and "Speech Reading"), H4B
5 (noting under "Present Level of Performance" in "Reading" that
6 Petitioner "is able to say & write his complete address. . . . He is
7 beginning to read & write sight words"), H6 (analyzing "Present Level
8 of Performance" in "Math"), H10 (setting "Reading" goal of being able
9 to "identify, spell and write 150 sight words. . . ."); Ex. L [Dec.
10 12, 2003 IEP] at L3 (analyzing "Present Level of Performance" in
11 "Reading" and "Mathematics"), L4 (analyzing "Present Level of
12 Performance" in "Writing").)

13 Similar to the specific assessment errors noted above, Petitioner
14 also makes general allegations as to each IEP during the relevant time
15 period. Petitioner's shotgun approach claims that:

- 16 • The ALJ erroneously found that as of June 2002 an
17 appropriate program had been designed to meet Petitioner's
unique needs. (Opening Br. at 19.)
- 18 • The ALJ erroneously found that all of Petitioner's unique
19 education needs were assessed, identified, and addressed for
the 2003-04 school year. (Opening Br. at 20.)
- 20 • The ALJ erroneously found that the November 2004 IEP created
21 a plan to address all of Petitioner's needs. (Opening Br.
at 20-21.)
- 22 • The ALJ erroneously found that Petitioner's unique needs

23
24 ⁵The only time when expressive and receptive language was clearly not
25 assessed is noted in an amendment IEP from a meeting on March 3, 2005. That
26 IEP notes that "there is no expressive or receptive language assessment for
27 [Petitioner]." (Ex. S-3 [March 3, 2005 IEP page].) However, even then, the
28 IEP team agreed that an expressive and receptive language assessment "is
necessary information to obtain." (Ex. S-3.) Petitioner received such an
assessment from Judy Nelson, a speech-language pathologist, on August 8,
2005. (See generally Ex. X [August 23, 2005 Report].) As discussed further
herein, the delay between the IEP in March and the assessment in August is
not grounds for any additional remedy.

1 were identified and addressed in his IEP for 2004-05.
2 (Opening Br. at 21.)

3 Here Petitioner appears to argue that he should have received a
4 "full assessment" and that a "full assessment was only done by Dr.
5 Patterson." (Opening Br. at 21.) Although it is not entirely clear
6 what Petitioner means by a "full assessment," the District was only
7 required to assess Petitioner in "suspected areas of disability." 20
8 U.S.C. § 1414(b)(3)(B) ("Each local educational agency shall ensure
9 that . . .the child is assessed in all areas of suspected
10 disability"). As noted above, Petitioner was so assessed. Simply
11 because Patterson conducted additional assessments or used additional
12 or different methodologies, does not mean that the District failed to
13 assess Petitioner.

14 **B. METHODOLOGY ERRORS**

15 Petitioner also argues, as noted in the bullet points above, that
16 just as the assessments were inadequate, so were the goals and plans
17 set forth to address Petitioner's needs. In particular, Petitioner
18 claims that the District should have adopted the recommendations of
19 its hired assessor, Patterson. (Opening Br. at 15, 22-23.)⁶ The ALJ
20 did not agree. (ALJ Decision at 30.) More importantly, even if the
21 District agreed with Patterson's assessment, and thought that his
22 recommendations would be beneficial, the District is still not
23 required to implement those recommendations. The District is simply
24 required "to obtain an independent educational evaluation of the
25 child" when requested and consider "the results of the

26
27 ⁶Petitioner also complains that the District did not adopt the
28 recommendations of Nelson. (Opening Br. at 15.) However, only the adoption
of Patterson's recommendations was raised as an issue for review by the ALJ.
(See ALJ Decision at 2-3 (listing "ISSUES" for consideration).)

1 evaluation . . . in any decision made with respect to the provision of
2 FAPE to the child." 20 U.S.C. § 1415(b)(1); 34 C.F.R.
3 § 300.502(c)(1). This was done here. (See March 13, 2007 Tr. at
4 91:21-92:9 (noting discussions with Patterson at December 2005 IEP
5 meeting); Ex. CC-14 [Dec. 9, 2005 IEP] (noting purpose of meeting was
6 "to review the out of district psycho-educational report [of
7 Patterson]" and that "IEP team has to reconvene at a later time to
8 review the report."); Ex. DD [Jan. 13, 2006 IEP] (containing analyses
9 and review of Patterson's report).)

10 Moreover, "questions of methodology are for resolution by the
11 States." Rowley, 458 U.S. at 208. "Rowley and its progeny leave no
12 doubt that parents, no matter how well-motivated, do not have a
13 right under the [IDEA] to compel a school district to provide a
14 specific program or employ a specific methodology in providing for the
15 education of their handicapped child." Lachman v. Illinois State Bd.
16 of Educ., 852 F.2d 290, 297 (7th Cir. 1988). Furthermore, the
17 District actually implemented some of Patterson's recommendations.

18 Patterson's report recommended a "visual means of teaching
19 reading" or "sight based reading program." (Ex. BB-24.) In 2006
20 Petitioner began the "Voyager" program that is designed to "help
21 students with reading skills." (March 9, 2007 Tr. at 34:14-35:7
22 (Moren testifying that Voyager "deals with fluency, comprehension,
23 phonemic awareness").) That program specifically contains a sight-
24 based component incorporated with each day of teaching. (March 23,
25 2007 Tr. at 12:8-10; 21:20-22:7 (testimony of Meredith Adams,
26 specialist in elementary education with the Division of Special
27 Education).) Patterson also recommended that Petitioner "receive a
28 total communication approach to speech and language development, that

1 he be taught lip reading and possibly the use of sign language." (Ex.
 2 BB-24.) Petitioner's IEP dated February 17, 2006 included an after-
 3 school teacher who will "introduce or preteach language arts" and
 4 "introduce sign as she is teaching [Petitioner]." (EE-27.)⁷

5 C. AMPLIFICATION DEVICE ERRORS

6 Petitioner contends that the ALJ erroneously found that the
 7 clinical audiologist did not expect Petitioner to hear without
 8 amplification. (Opening Br. at 21.) Petitioner argues that
 9 amplification is not required because the "District's own
 10 audiologist, Mr. Yamasaki, testified that [Petitioner] was very
 11 capable of hearing without his FM trainer and that he and [Petitioner]
 12 held conversations on the playground and were able to understand one
 13 another, all without the FM trainer." (Opening Br. at 19.) However,
 14 the testimony cited does not support such a strong assertion.⁸ When
 15 asked if Petitioner has a difficult time understanding Yamasaki,
 16 Yamasaki stated:

17 You know I don't really--it doesn't impress me that he does, you
 18 know, I don't feel like he's struggling **that much**. I think **we**
 19 **both asked for clarification** if we're uncertain. But you know,
 20 when I do talk with him I don't get the sense that we're
 21 struggling to communicate.

22 (March 21, 2007 Tr. at 80:6-12 (emphasis added).) First, this does
 23

24 ⁷This service was initially delayed, but the District has offered to
 25 provide compensatory services to make up for time missed. (ALJ Decision at
 22 ¶ 92, n.4.)

26 ⁸Or, as often occurs in Petitioner's brief, the cite appears to be
 27 wrong and has nothing to do with the assertion at all. (See Opening Br. at
 28 19 (citing March 21, 2007 Tr. at 7:20-25 for above noted proposition despite
 fact that cited testimony covers an unrelated conversation between counsel
 and the ALJ).)

1 not support a claim for trouble-free communication. Second, it is
2 unclear whether this testimony relates to use with or without an
3 amplification device. Yamasaki does later state he could communicate
4 with Petitioner on the playground without use of an auditory trainer.
5 (March 21, 2007 Tr. at 91:2-20.) However, because Petitioner may not
6 have been using his auditory trainer, that does not mean he was
7 without his hearing aids, i.e., Petitioner may still have been using
8 an amplification device.⁹

9 More importantly, aside from Yamasaki's ad hoc recollections,
10 Yamasaki prepared a report in which he recommended "Continued use of
11 amplification with FM auditory trainer in the classroom." (Ex. 21
12 [March 11, 2005 Report on Service Request].) Given Petitioner's amply
13 documented hearing loss, there is more than enough evidence for the
14 ALJ's conclusion that Petitioner required amplification. (See e.g.,
15 Ex. BB-6 [Patterson Report] (noting cumulative record showing
16 "bilateral severe to profound hearing loss and bilateral middle ear
17 function difficulties"), BB-7 (noting record showing "moderate to
18 severe hearing loss in the right ear and severe to profound loss in
19 the left ear").)

20 **D. CREDIBILITY ERRORS**

21 Petitioner argues that the ALJ made errors in determining the
22 credibility of witnesses. Although Petitioner discusses the
23 credibility of school psychologist Laura Interiano (Opening Br. at 16)
24 and speech pathologist Monica Chin (Opening Br. at 18) it seems that
25 Petitioner is mostly upset that the ALJ did not give Patterson's

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27 ⁹There are different types of amplification systems. An "auditory
28 trainer" is a "system [] where the teacher wears a radio microphone and that
feeds into [a subject's] hearing aids and it allows them to hear her voice
better." (March 21, 2007 Tr. at 61:7-21.)

1 report "the full weight it deserves" (Opening Br. at 16). The
 2 District in turn challenges the credibility of both Patterson and
 3 Nelson. The ALJ was faced, more or less, with a "battle of the
 4 experts."

5 Here, the Court is at an extreme disadvantage as compared to the
 6 ALJ. An ALJ "who receives live testimony is in the best position to
 7 determine issues of credibility." Amanda J. ex rel. Annette J. v.
 8 Clark County Sch. Dist., 267 F.3d 877, 889 (9th Cir. 2001). Given
 9 that this Court is to give substantial deference to the ALJ in the
 10 first instance, and the strong credentials of all of the disputed
 11 witnesses (Ex. MM [Patterson Curriculum Vitae]; Ex. OO [Nelson
 12 Curriculum Vitae]; March 7, 2007 Tr. at 133:18-134:19 (Interiano
 13 educational background); March 15, 2007 Tr. at 26:3-32:25 (Chin
 14 educational and professional background)), compounded with the ALJ's
 15 ability to view, hear and interact with the witnesses during their
 16 live testimony, this Court will not alter the ALJ's credibility
 17 findings.¹⁰

18 **E. IMPLEMENTATION ERRORS**

19 Petitioner claims that the District failed to implement the

20 _____
 21 ¹⁰Moreover, the ALJ's findings as to Patterson were not based on live
 testimony alone. As noted by the ALJ:

22 Patterson did not use Student's amplification system when he
 23 administered the assessment. Patterson did not observe Student at
 24 school or speak to any District teachers, staff or service providers
 for his assessment. These deficiencies are significant and affect the
 value and weight to be accorded to the data obtained and
 25 interpretation of that data.

26 (ALJ Decision at 12.) Indeed, Patterson did not use an auditory trainer
 when he tested Petitioner. (March 6, 2007 Tr. at 112:11-113:2.)
 27 Furthermore, Petitioner turned his hearing aid off during the testing,
 although Patterson maintains that when the hearing aid was off the "work
 28 that we were doing at that time had nothing to do with hearing." (March 6,
 2007 Tr. at 111:25-112:10.)

1 services agreed to and written into the February 2006 IEP. (Opening
2 Br. at 16.)¹¹ Petitioner characterizes the failure to implement the
3 noted services as a "procedural violation." (Opening Br. at 15.)
4 Here, the ALJ agreed with Petitioner and found that Petitioner
5 actually "was denied a FAPE when the District failed to fully and
6 timely implement the DHH in-home itinerant teacher services to provide
7 sign language instruction and pre-teaching services in Student's home
8 for two hours per day two days per week" as specified in the February
9 17, 2006 IEP (EE-27). (ALJ Decision at 30.)

10 It appears that Petitioner actually takes issue with the ALJ's
11 finding that no additional compensatory services were warranted as a
12 result of the implementation failure. However, the ALJ was justified
13 in reaching that conclusion. The District offered and provided
14 compensatory services for the time missed. (March 9, 2007 Tr. at
15 266:20-24 (Testimony of Ford) (Q: "At any point when services weren't
16 provided for the pre-teaching service, did the District provide
17 compensatory services to make up for that time?" A: "Yes."); Ex. 403
18 [April-May 2006 email string between District case manager for deaf
19 and hard of hearing, Robert Perry, and Ford] (Perry writing: "All we
20 are going to do in this amendment is to say that the after school
21 service will be two hours per week for the rest of this school year
22 plus AN ADDITIONAL 30 hours compensatory service for the time
23 missed").)

24 Separately, Petitioner argues that the ALJ erroneously found JE's
25 parents responsible for a delay in assessment of Petitioner in 2005.

27 ¹¹Petitioner also noted a failure to implement services in a November
28 2006 IEP. (Opening Br. at 16.) However, the November 2006 IEP falls
outside of the relevant period and, as such, will not be discussed.

1 (Opening Br. at 21-22.) Specifically, Petitioner's advocate contacted
2 the District as to Petitioner's request for an IEE. (Ex. S-6.)
3 However, the District did not have authorization to discuss Petitioner
4 with Petitioner's advocate. (Ex. T-1; ALJ Decision at 10 ("Because
5 they were unable to obtain authorization from the Student's parents,
6 District personnel were not authorized to communicate directly with
7 Ford.")) Given this communication roadblock, the ALJ was justified
8 in finding that "Student's parents failed to cooperate with District's
9 attempts to secure authorization to conduct its own assessments before
10 approving an IEE." (ALJ Decision at 11.)¹²

11 **F. EVIDENTIARY ERROR**

12 Last, Petitioner argues that the ALJ erroneously excluded a
13 relevant document from evidence:

14 At hearing, when Plaintiff offered a District-generated document
15 regarding [Petitioner's] Speech and Language needs, from 2000,
16 for the purpose of establishing District knowledge of JE's needs
17 in that area prior to the time of the hearing. [sic] Exhibit D
18 was not allowed in to [sic] evidence.

19 (Opening Br. at 22.) Given that the document, apparently an IEP,
20 related to material outside of the relevant period and could not be
21 authenticated by the witness (March 8, 2007 Tr. at 123:13-24 ("this
22 witness has not seen this")) the Court will not alter the ALJ's
23 conclusion.¹³

24 _____
25 ¹²Nor does it seem, even if the ALJ were mistaken, that the error would
26 alter the outcome. See Amanda J., 267 F.3d at 892 ("Not every procedural
27 violation, however, is sufficient to support a finding that the child in
28 question was denied a FAPE.").

¹³Although Petitioner claims the document would establish the
District's knowledge of Petitioner's claimed needs, it is not clear--and
Petitioner does not explain--how this would have affected the ultimate

IV. CONCLUSION

Accordingly, for the reasons set forth above, the decision of the ALJ is **AFFIRMED**.

IT IS SO ORDERED.



DATED: January 16, 2009

**AUDREY B. COLLINS, CHIEF JUDGE
U.S. DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA**

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