

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

OXNARD ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2007100205

DECISION

Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH), State of California, heard this matter in Oxnard, California, on November 3, 4, and 7, and December 18 and 19, 2008, and January 6 and 7, 2009.

Mother represented Student. Student was not present during the hearing.

Benjamin Nieberg, Attorney at Law, represented the Oxnard Elementary School District (District). Ron Moon, District's Administrator of Pupil Services, attended the hearings on November 3 and 4, 2008, on behalf of District.

On October 5, 2007, Student filed a Request for Due Process Hearing. Student filed an amended complaint on August 19, 2008. Requests for continuances were granted on October 23, 2007 and May 23, and October 1, 2008. A continuance was granted for good cause for the parties to file written closing briefs on January 21, 2009, which was later continued to January 28, 2009, at the parties' request. The parties filed closing briefs on January 28, 2009.¹ Thereafter the record was closed, and the matter was submitted for decision.

¹ The font size of Student's brief was too small (Cal. Code Regs., tit. 1, § 1006, subd. (d)) and the District faxed its brief after 5:00 p.m. (Cal. Code Regs., tit. 1, § 1006, subd. (h)) Despite these technical errors, the briefs were accepted and considered by the ALJ.

ISSUES²

1. Did the District deny Student a Free and Appropriate Public Education (FAPE) in the 2005-2006 school year (SY) because:
 - A. The District did not timely complete Student's psychoeducational assessment and conduct an Individualized Education Program (IEP) meeting;
 - B. The October 10, 2005 assessment plan failed to assess Student in all areas of suspected disability because the assessment did not include an Occupational Therapy (OT), Auditory Processing Disorder (APD) or Assistive Technology (AT) assessment;
 - C. The District failed to provide Parents with a copy of their notice of parental rights from October 10, 2005 through the end of the school year;
 - D. The District did not provide Parents with a copy of the assessment findings before the February 13, 2006 IEP meeting nor a copy of the proposed IEP, which did not allow Parents to meaningfully participate in the IEP process;
 - E. The District failed to consider Parents' input at the February 13, 2006 IEP meeting;
 - F. The February 13, 2006 IEP did not provide Student with adequate speech and language services;
 - G. The February 13, 2006 IEP did not provide Student with an educational program that addressed Student's language and reading, auditory processing, math, verbal learning and memory deficits;
 - H. The District did not consider Student's need for AT services at the February 13, 2006 IEP meeting;
 - I. The February 13, 2006 IEP did not provide Student with adequate OT and adaptive physical education (APE) services to address his gross and fine motor skills deficit;
 - J. The February 13, 2006 IEP did not contain measurable goals;

² These issues are those framed in the October 22, 2008 Order Following Prehearing Conference and as further clarified at hearing. The ALJ has reorganized the issues for purposes of organizing this Decision. Student also alleged in the amended complaint that the District violated the federal Rehabilitation Act, 29 U.S.C. section 794, the Americans with Disabilities Act, 42 U.S.C. section 12101, et seq., and the No Child Left Behind Act. These contentions were stricken from the amended complaint because they were outside the scope of OAH's jurisdiction. (Ed. Code, § 56501, subd. (a).)

K. The February 13, 2006 IEP failed to document how the District would inform Parents of Student's progress and the methodology District would use to educate Student;

L. The District failed to have an authorized representative attend the February 13, 2006 IEP meeting;

M. The District failed to get Parents' consent before conducting OT assessments;

N. The District failed to timely respond to Parents' request for an Independent Education Evaluation (IEE);

2. Did the District deny Student a FAPE in SY 2006-2007 because:

A. The District did not provide Student with adequate speech and language services and did not provide a licensed speech and language pathologist to provide this service;

B. The October 17, 2006 and February 9, 2007 IEPs did not provide Student with an educational program that addressed his reading deficits;

C. The October 17, 2006 and February 9, 2007 IEPs failed to provide Student with counseling as a related service to address his anxiety;

D. The District did not assess Student in all areas of suspected disability, including an OT, APD, or AT assessment;

E. The October 17, 2006 and February 9, 2007 IEPs were not reasonably calculated to permit Student to make adequate educational progress in the general education curriculum;

F. The District did not address the issue of whether other children bullied Student due to his disability in the October 17, 2006 and February 9, 2007 IEPs;

G. The District did not permit Parents to adequately participate at the October 17, 2006 and February 9, 2007 IEP meetings by limiting the scope of the meetings;

H. The District failed to have all needed team members at the October 17, 2006 and February 9, 2007 IEP meetings;

I. The District violated Student's procedural rights by not providing Parents with Student's complete copy of the speech and language provider logs;

3. During SY 2005-2006 and 2006-2007, the District failed to provide Parents with prior written notice of:

- A. Whether the District would grant Parents' request for IEEs;
- B. A change of speech and language services at the start of 2006-2007 school year;
- C. The District's failure to conduct APD, OT, and AT assessments;

CONTENTIONS

Student asserts that during SY 2005-2006 that the District failed to provide him with a FAPE because the initial assessment to determine his eligibility for special education services failed to assess him in all areas of suspected disability, specifically AT, APD and OT. Student argues that the District did not timely complete the psychoeducational assessment, which delayed the IEP meeting to determine Student's eligibility for services. Student also contends that the District never informed Parents of their parental rights during SY 2005-2006, did not consider the input of the Parents at any of Student's IEP meetings and failed to have required District personnel at the IEP meetings.

Student argues that the District denied Parents' procedural rights by failing to give them a copy of the psychoeducational assessment before the February 13, 2006 IEP meeting, which prevented Parents from meaningfully participating in the IEP process. Student contends that the District's February 13, 2006 IEP was not reasonably calculated to allow him to make meaningful educational progress because the IEP did not address his unique needs in the areas of auditory processing, and fine and gross motor skills. Additionally, the goals the District developed were not measurable and Student's educational program was not designed to get Student to grade level proficiency. Additionally, the District did not document how it would inform Parents of Student's progress.

During SY 2007-2008, Student asserts that the District failed to provide the speech and language services in his IEP, and provided some sessions with an unqualified person. Student contends that the District continued to deny Student a FAPE by failing to assess Student in all areas of suspected disability. Student also argues that the October 17, 2006 and February 9, 2007 IEPs did not address his unique needs. Additionally, the District did not have required team members at these IEP meetings and improperly limited Parents' participation by limiting the scope of discussion. Student also asserts that the District failed to address that other students bullied him and his need for counseling services to address his anxiety. Finally, Student contends that the District violated Parents' procedural rights by not providing prior written notice regarding Parents' request for IEEs and the District's failure to provide speech and language services at the beginning of the school.

As proposed resolutions, Student seeks an assessment for a Lindamood Bell reading program, Lindamood Bell services and transportation. Further, Student requests social skills training, speech and language and OT services, with transportation, through a qualified private provider based on the results of an independent assessment funded by the District. Regarding Student's APD, Student seeks individualized instruction, with transportation, through a qualified private provider based on the results of an independent assessment funded by the District. Finally, Student requests an order that the District place Student in a private school, including transportation.

The District asserts that its IEPs were reasonably calculated to allow Student to make meaningful educational progress and that Parents had unrealistic expectations of the amount of progress Student could make. The District argues that it properly developed the IEP based on the assessments, Student's presents levels of performance, his unique needs and cognitive ability. Specifically, the District contends that it assessed Student in all areas of suspected disability and that Student made adequate educational progress with the educational program that the District developed. Regarding the OT assessment, the District argues that it attempted to assess Student, but that Parents never provided their consent. The District asserts that it provided Parents with the parental rights notice and considered information Mother presented at the IEP meeting. The District admits that it did not provide Student with speech and language services at the start of SY 2006-2007, but argues that it provided make-up sessions during the school year.

FACTUAL FINDINGS

Jurisdiction and Background

1. Student is an 11-year-old boy, presently in the fifth grade, who, at all relevant times, resided in the District. Student did not attend preschool and Parents held Student back one year before enrolling him in a District kindergarten. The District determined Student eligible for special education at the February 13, 2006 IEP meeting under the category of specific learning disability (SLD). Student attended kindergarten through third grade in a District school until on or about February 13, 2007, when Parents removed Student from the District. On or about March 6, 2007, Student enrolled in the California Virtual Academy (CAVA), where he presently attends.³

Timeliness of Initial Assessment for Special Education Eligibility

2. Before a school district takes any action with respect to the initial placement of a student with exceptional needs in special education, the district must conduct an individual assessment of a student's educational needs, which the district must document. The district

³ CAVA, which is a network of charter schools offering an independent study/home study program, is a LEA responsible for providing its pupils with special education services. (Ed. Code, § 47640 et seq.)

must deliver an assessment plan to a parent within 15 days of the assessment request. An IEP meeting to review the assessment results must occur within 60 days of the receipt of parental consent for the assessment, not counting days between the student's school sessions and vacations in excess of five schooldays. If the IEP team determines that the student is eligible for special education services, the district must convene an IEP meeting within 30 days to develop a proposed placement and services for the student's initial IEP. Student asserts that the District did not timely complete its psychoeducational assessment and hold the initial IEP meeting to determine Student's eligibility for special education services.

3. Failing to timely convene an IEP meeting to discuss an assessment is a procedural violation of the IDEA. Not every procedural violation is sufficient to support a finding that a school district denied a student a FAPE. A student has not received a FAPE only if the procedural violation did any of the following: (1) impeded the student'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.

4. On October 10, 2005, Alice Smith, District school psychologist, presented Mother with an assessment plan to evaluate Student's eligibility for special education services. Ms. Smith prepared the assessment plan at the recommendation of the October 5, 2005 Student Study Team (SST). The October 5, 2005 SST was attended by Mother, Student's teacher, Katheryn Orlinsky, Student's second grade teacher, Krista Antu, District resource specialist, and Ms. Smith.

5. SST members noted that Student had deficits in the areas of reading, writing and gross and fine motor skills. Regarding reading and writing, Student was reading at the beginning first grade level, and had difficulty with writing complete sentences. Student was near grade level in math. Regarding math, Student required small group instruction and needed constant repetition to retain and understand concepts. The SST also noted Student's difficulty producing correct speech sounds, and that other adults and students had difficulty understanding him. Additionally, Student could not speak in complete sentences. Finally, SST members noted that Student had difficulties with his fine and gross motor skills.

6. The SST ultimately recommended that the District assess Student because of his significant reading, speech and language and writing deficits. After the SST meeting, Ms. Smith prepared the assessment plan, which included psychoeducational, academic, speech and language and psychomotor assessments. Mother consented to the assessment plan during the October 10, 2005 meeting with Ms. Smith.

7. The District had 60 days from October 10, 2005, to complete the assessment and hold the IEP meeting regarding Student's eligibility for special education services, which was December 22, 2005. Student's school was not in session from November 19 through 27, 2005 so those days are not counted. Regarding the initial offer of placement and services, the District had until February 15, 2006, to hold this IEP meeting because Student's school was not in session from December 23, 2005 through January 16, 2006.

8. The District did not timely complete its initial assessment and hold the IEP meeting to determine Student's eligibility for special education services. The District did not hold the initial eligibility IEP meeting until February 13, 2006, when it also made its initial offer of services and placement.

9. Despite the District's delay in completing the initial assessment and holding the eligibility IEP meeting, the District timely held the IEP meeting to make its initial offer of services and placement. Student did not establish that the District's delay in completing the psychoeducational assessment and holding the initial eligibility IEP meeting constituted a substantive denial of FAPE because the District made a timely offer of services and placement. The District's procedural violation did not deny Student any educational benefits, or impede his Parents' ability to participate in his educational decision-making process. Additionally, Student did not establish that the District needed to conduct its initial assessment and hold the IEP meeting for its initial offer of placement of services sooner due to the severity of Student's disability. Therefore, the District did not deny Student a FAPE because it held timely the IEP meeting for the initial offer of placement and services.

10. The District needed to provide Parents with a parental rights form with the initial assessment plan. Student asserted that the District did not provide Mother with a copy of the parental rights form when Ms. Smith presented the assessment plan. Although Ms. Smith did not recall handing Mother of a copy of the parental rights form, her practice when developing and presenting parents with an assessment plan was to give parents a copy of the parental rights form at the meeting to discuss the assessment plan. The October 10, 2005 assessment plan form states that the parent acknowledges receipt of the parental rights form. Mother's testimony that she did not read the assessment plan form when she signed it is not credible because her entire testimony revealed that she reviewed in depth documents presented by the District and raised numerous questions after reviewing the document. Therefore, Ms. Smith gave Mother a copy of the parental rights form when she presented the October 10, 2005 assessment plan to mother and obtained background information.

Psychoeducational Assessment

11. Ms. Smith is a credentialed school psychologist and has assessed numerous children in her eight years as a school psychologist. Ms. Smith has a Master of Arts and Bachelor of Arts in Psychology. She has a Pupil Personnel Services Credential from the State of California. Ms. Smith was well qualified to conduct a psychoeducational evaluation of Student.

12. Prior to assessing Student, Ms. Smith conducted a thorough record review and conducted interviews of Student, Mother, and Ms. Orlinsky. No one had performed a psychoeducational assessment on Student before Ms. Smith's assessment. Mother did not report that Student had any problems with his classmates, which Student confirmed when he spoke with Ms. Smith.

13. Ms. Orlinsky is an experienced teacher as she has taught elementary classes for 12 years with the District. In her classroom, Student had problems following directions. Ms. Orlinsky provided Student with accommodations and assistance, such as preferential seating, small group instruction, working with an aide assigned to a classmate, a reading buddy, additional time to complete assignments, a computer reading program and a phonics program for reading. While these accommodations and aides helped Student make progress, Student continued to fall further behind his classmates.

14. On verbally presented assessment questions, Student was slow to respond. Student displayed significant weakness with his working memory, which a person needs for higher-functioning tasks. On the visual subtests, Student had difficulty completing tasks. While some of Student's difficulty could be accounted for by his need for glasses, Student displayed slow processing related to his low average cognitive ability. Student exhibited significant weakness in his reading ability as his ability was approaching the beginning first grade level. Student's math and spelling abilities were areas of strength because he was near grade level. Student's cognitive ability was in the low average range.

15. Ms. Smith assessed Student's fine motor skills and Student's ability was significantly below average. A review of Student's drawings during the assessment showed that even for correct reproductions, Student had difficulty drawing a straight line and replicating shapes, which corresponded to the fine motor deficits noted by Ms. Orlinsky. Ms. Smith observed Student during an outside class activity and Student's movements were slow and awkward in comparison to his classmates. Ms. Smith administered no tests for Student's gross motor skills.

16. Ms. Smith's psychoeducational assessment determined that Student had an auditory processing disorder. Student's low average cognitive ability, teacher observations and the results from the speech and language assessment established that Student had an auditory processing disorder that negatively affected his ability to follow classroom instruction, and his reading skills.

17. Based on the test results, Ms. Smith recommended that the District find Student eligible for special education services under the criteria of SLD. Student had a significant discrepancy between his assessed verbal cognitive ability and his academic achievement in reading.

Student's Speech and Language Deficits

18. Ms. Correia, District speech and language specialist, conducted Student's speech and language assessment on November 29, 2005. While Ms. Correia did not testify at the hearing, neither party introduced any evidence that the findings in her report were not accurate. Ms. Correia's assessment found that Student had significant problems with antonyms, syntax construction and pragmatic judgment. Student had difficulty with his expressive language based on the test scores and Ms. Correia's observations. Ms. Correia's

findings comport with Ms. Orlinsky's classroom observations regarding Student's inability to form complete sentences and difficulty in engaging in social communication.

19. Regarding paragraph comprehension, Student had difficulty orally answering questions about a short story and could more accurately respond with picture or visual cues. Student's ability to respond improved when the story was repeated. In Ms. Orlinsky's classroom, Student had difficulty following classroom instructions and answering questions. Student could follow one-step directions, but had difficulty with two-to-three step instructions. Additionally, Student had problems with pragmatic language as he had trouble properly initiating conversations with his classmates and understanding non-verbal social communication. However, Mother reported that Student did not have problems when communicating with other children.

20. Regarding speech articulation, Student's intelligibility was poor due to limited oral-motor movement and errors producing "w/r," "f/th," "d/th," "b/v," and "l" sounds. Student had difficulty with proper tongue movement and puckering his lips.

Areas of Suspected Disability at Time of Initial Assessment

21. A school district is obligated to assess a student in all areas related to the student's suspected disability. The District's October 10, 2005 assessment plan covered the areas of psychoeducational, academic and psychomotor. Student asserts that the District did not assess him in all areas of suspected disability because the District did not conduct an OT, APD or AT assessment.

Occupational Therapy

22. Student asserts that the District knew that he had significant deficits regarding his fine and gross motor skills, which required an OT assessment. Ms. Smith knew of Student's fine and gross motor skill deficits when she drafted the initial assessment plan based on information presented at the SST meeting. However, Ms. Smith decided not to include an assessment from an occupational therapist and APE specialist because those assessments could delay the assessment process. In her view, if the District found Student eligible for special education service, the District could then conduct an OT assessment.

23. The District's initial assessment included a psychomotor assessment conducted by Ms. Smith that examined Student's fine motor skills, such as handwriting, and ability to manipulate items with his hands. However, Ms. Smith's psychomotor assessment was not an adequate assessment of Student's fine motor skills because she only used one measure to examine his deficits. Further, Ms. Smith did not examine Student's gross motor deficits. Finally, Ms. Smith was not qualified to make any recommendations whether Student required OT services or goals based on her assessment results.

24. The District did not offer to conduct an OT assessment until May 8, 2006. However, the proposed assessment plan only had an assessment by the APE specialist, which

would only assess Student's gross motor skills. Therefore, the District did not assess Student in all areas of suspected disability, by not conducting an OT regarding Student's fine and gross motor needs.

Auditory Processing Disorder

25. At the time of the initial assessment, the District suspected that Student might have an APD because of his difficulty in following classroom directions. Ms. Smith considered information from Ms. Orlinsky regarding Student's classroom performance and his auditory processing difficulties when she assessed Student. Ms. Smith's psychoeducational assessment examined Student's auditory processing deficits and determined that he had an APD. While Student asserted that only an audiologist could conduct an APD assessment, Student presented no evidence to support this contention. Therefore, Student did not establish that the District failed to assess Student in the suspected disability of auditory processing.

Assistive Technology

26. A school district is required to use the necessary assessment tools to gather relevant functional and developmental information about the child to assist in determining the content of the child's IEP. AT devices or services may be required as part of the child's special education services, related services, or supplementary aids and services. An AT device is any item used to increase, maintain or improve the functional capabilities of a child with a disability. To determine if a student requires such AT services, a school district must evaluate a student's need for AT services.

27. The District did not conduct an AT evaluation during the initial assessment. While the District used AT services, such as computer program to assist with phonics, Student did not require AT services due to his auditory processing, fine motor or reading deficits. Student did not present evidence that he required a specific assessment to evaluate his AT needs at the time of the initial assessment. Additionally, information in Ms. Smith's psychoeducational assessment did not indicate that Student needed testing in this area. Therefore, Student did not require an AT assessment.

February 13, 2006 IEP Meeting

Consideration of Parent Information at the IEP Meeting

28. Parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. A district must fairly and honestly consider the views of parents expressed in an IEP meeting. School officials may not arrive at an IEP meeting having firmly decided on the program they will offer. A district does not predetermine an IEP simply by meeting to review and discuss a child's evaluation and programming in advance of an IEP meeting. However, a district violates the parents' right to participate in

the IEP process if it predetermines the child's program and does not consider the parents' requests with an open mind. The test is whether the school district comes to the IEP meeting with an open mind, and discusses and considers the parents' placement recommendations and concerns before the IEP team makes a final recommendation.

29. The district personnel meet before the IEP meeting to prepare a draft IEP, which included the District's proposed goals, related services and placement. Ms. Smith completed her psychoeducational report on February 13, 2006, and incorporated information from Ms. Correia's speech and language assessment and Ms. Antu's academic assessment into the draft IEP.

30. Attending the February 13, 2006 IEP meeting were Ms. Smith, Ms. Antu, Ms. Correia, Ernest Morrison, the school principal, and Mother. The District designated Mr. Morrison as its administrator for the IEP meeting, who could sign the IEP and bind the District. While the District prepared a draft IEP before the meeting, it had only one copy for all the participants to share. Additionally, Ms. Smith did not have a copy of her psychoeducational report available for the IEP team members, but discussed her report in detail to the IEP team members.

31. Ms. Correia gave the IEP team members a copy of her speech and language assessment report and presented her findings. Ms. Smith verbally presented information from her assessment, including her observations and test results. Ms. Smith discussed Student's reading deficits and his auditory processing disorder. Ms. Smith also discussed that Student displayed some autistic like behaviors, such as limited eye contact and social communication, but that he did not meet the eligibility criteria. Ms. Smith and Ms. Antu also discussed that math was an area of relative strength for Student because he was near grade level according to the test results.

32. After the District presented the assessment information, it presented the proposed goals in the areas of communication, reading, and writing. The District also discussed the proposed accommodations to address Student's APD and speech and language deficits. Finally, the District explained its proposed placement. Mother consented to the District's offer, and initialed that she had the opportunity to participate in the IEP process and that the District gave her a copy of the parental rights form. The District provided Mother with a complete copy of the IEP and reports on February 15, 2006.

33. Student asserts that the District entered the February 13, 2006 IEP meeting with a predetermined IEP offer and did not consider information Mother presented. While the quantity of information presented at the IEP meeting may have overwhelmed Mother, she informed the District of her work with Student at home, concerns she had with Student's substitute first grade teacher and that Mother scheduled an eye appointment for Student. Additionally, Mother's recollection about this IEP meeting was not complete as she asserted that Mr. Morrison did not attend the IEP meeting, when Mr. Morrison did attend this IEP meeting. The fact that the District did not make any changes to its draft IEP at the meeting does not mean that the District predetermined its offer before the February 13, 2006 meeting.

Instead, the District did not make changes as Mother did not request any changes to the IEP and the information presented all team members did not require any changes.

34. The District listened to the information Mother presented at the IEP meeting, and did not present the IEP in a take-it-or-leave-it manner. Therefore, the District did not predetermine its IEP offer and not prevent Mother from participating in Student's educational decision-making process or that denied Student a FAPE.

Copies of Draft IEP and Assessments for Mother at the IEP Meeting

35. While it is preferable that Mother had her own copy of the IEP and assessment report to review while the District presents its offer, the District was not required to have a separate copy of the IEP and assessment at the IEP meeting for Mother. Mother adequately participated in the IEP meeting and understood the District's offer. Mother did not contend that she did not have the ability to review the IEP during the meeting, or that the District did not adequately explain the proposed goals, related services, accommodations and placement or that Ms. Smith did not adequately summarize information from the psychoeducational assessment.

Authorized Representative at the IEP Meeting

36. Regarding Student's assertion that the District did not have an authorized administrator in attendance at the IEP meeting, the District did have an authorized representative with Mr. Morrison in attendance.

Progress Reports

37. A school district must report to parents a student's progress on the IEP goals no less than the report of academic progress for all other students. Student asserts that the IEP does not state how the District would inform Parents of Student's progress. The District did not check on the IEP the appropriate box describing how it would inform Parents of Student's progress. However, the IEP stated that the District would inform Parents of Student's progress as frequently as the general education reporting requirements. While the District needed to state on the IEP the manner in which it was to inform Parents of Student's progress, its failure did not meaningfully deny Parents the ability to participate in the educational decision-making process or deny Student any educational benefit.

38. While the District committed some procedural violations at the February 16, 2006 IEP meeting, the District's conduct did not deny Student any educational rights or prevent Parents from participating in Student's educational decision-making process. Additionally, the District considered information Mother presented at the IEP and did not predetermine the IEP that it offered at the IEP.

Adequacy of the District's February 13, 2006 IEP Offer

Speech and Language Goals and Services

39. To fulfill its obligation to offer a FAPE to Student for the current school year, the District was required to develop an IEP that was (1) designed to meet Student's unique needs; and (2) reasonably calculated to confer Student with meaningful educational benefit.⁴

40. The District offered two speech and language sessions a week, 25 minutes a session. While the IEP did not state whether the speech and language sessions were group or individual therapy, the District provided individual sessions. The District's proposed communication goals included a goal for Student to follow two-to-three step oral directions and for Student to ask his teacher to repeat or clarify instructions that he did not understand. Additionally, the District proposed a goal to work on Student's articulation deficits regarding sounds involving the letter "l." The final communication goal was for Student to produce a five to six word grammatically correct sentence.

41. Regarding the articulation goal, the District's offer was adequate to meet Student's need. The testimony of Lori McCully, Student's speech and language provider during SY 2006-2007, established that it would overwhelm Student to work on all the sound production deficits at once, and would be more efficacious to work on simpler sounds and work up to harder sounds. Therefore, the District's articulation was appropriate for Student to master the "l" sounds and then move to sounds that are more difficult. Additionally, working on oral motor skills more than 15 minutes is tiring for a student, and fatigue reduces the effectiveness of the sessions. Moreover, the goal was measurable as the speech and language therapist could measure if Student produced correct sounds in four out of five trials.

42. Regarding the goal that Student follow two to three step oral directions, the evidence established that he could not perform this task at the time of the IEP meeting. The fact that Student made little progress since kindergarten without special education services demonstrated his need for this goal. The goal for Student to learn this skill to access information presented in the classroom and to follow the teacher's instructions was appropriate. The goal was measurable by the speech and language therapist based on observations whether Student could follow oral directions.

43. The District's proposed goal that Student ask for clarification and repetition of oral information addressed his expressive and receptive language deficits. The District's assessments and Ms. Orlinsky's classroom observations established that Student was not making adequate educational progress because when he did not understand directions, he did not ask for help and he incorrectly completed the assignment based on what he thought the directions were. This goal appropriately addressed his needs in this area. The goal was

⁴ There are other substantive requirements for a FAPE, which are not relevant to the issues presented in this decision.

measurable by the speech and language therapist and classroom teacher based on observations whether Student asked for assistance.

44. The final IEP communication goal addressed Student's expressive language and pragmatic language deficits related to forming complex and grammatically correct sentences. This goal appropriately addressed Student's deficit because he had difficulty communicating properly with his teacher and classmates. The goal was measurable by the speech and language therapist based on observations whether Student could produce a grammatically correct five to six word sentence.

45. The District's proposed goals adequately addressed Student's articulation and expressive, receptive and pragmatic language deficits. While Student had difficulty initiating conversations with his peers and maintaining a conversation, Student did not establish that at the time of the February 13, 2006 IEP that he needed additional speech and language goals. The two speech and language sessions were adequate to work on Student's speech and language goals based on his unique needs at the time of the IEP meeting. Therefore, the District provided Student with adequate speech and language goals, which were measurable, and services to allow Student to make adequate educational progress.

Academic Goals and Services

46. The parties do not dispute that Student had significant deficits in his reading skills at the time of the February 13, 2006 meeting, but disagree regarding the intensity of service Student needed. The parties dispute the severity of Student's math deficits, and whether Student required math goals and RSP assistance with math. Student asserted that the District's IEP did not adequately address his reading deficits because the District did not offer a specific, scientifically researched reading program, and that District-proposed goals did not propose to bring Student to grade level.

Reading Goals

47. Because Student's reading level was barely at the beginning first grade level, the District developed three reading goals so that Student could read at the first grade level in a year. Student asserted that the District's proposed goals were not adequate because the goals did not propose to get Student closer to his present grade level. The severity of Student's reading deficits would not allow Student to make a two grade level jump in a year, as Parents requested. Given Student's cognitive deficits and delayed reading skills, the expected progress was adequate.

48. Student criticized the District's proposed goal to improve his ability to read common first grade sight words aloud. Student asserted that this goal only taught him to memorize words, not how to read. The evidence established that this goal was appropriate because Student needed to learn the base words that his classmates recognized by sight, which would allow Student to work on reading and decoding words that are more complex. The goal was measurable by the resource and classrooms teacher based on their observations.

49. The next reading goal was designed to have Student read a selection independently at the first grade level and to be able answer questions either orally or written with 60 percent accuracy. This goal appropriately addressed Student's reading deficit because Student was reading at the kindergarten level. Based on the severity of Student's reading deficit and cognitive ability, more than one-year's growth was unrealistic. The goal was measurable by resource-and classroom teacher-based on observations.

50. The final reading goal had Student read orally at the first grade level with 80 percent accuracy. The District designed the goal to work on Student's reading fluency and decoding skills. This goal appropriately addressed Student's reading and language deficits because Student was reading at the kindergarten level. The goal also addressed his expressive language deficits. The goal was measurable by the resource and classroom teachers' based on observations.

Writing Goal

51. The District's goal that Student write a four-to-six sentence composition with correct capitalization, grammar, and punctuation appropriately addressed Student's writing deficit. The goal was measurable by the resource and classroom teacher's observations.

Math Goals

52. The District did not develop a math goal for Student because he was near grade level. Student's has math deficits related to math problem solving, which involved reading. Therefore, the District properly determined that it needed to work intensely on Student's reading because this would also improve Student's math problem solving skills.

RSP Services

53. The District offered Student 45 minutes a day of pullout, RSP assistance, focused on reading and language arts. Ms. Antu properly based this level of RSP assistance on Student's psychoeducational assessment, and his unique needs, classroom performance and goals. As part of the RSP services, Ms. Antu coordinated the RSP program with the classroom curriculum and consulted with the classroom teacher. For example, Ms. Antu worked on Student's reading by going over a social studies assignment. The District continued to offer the additional support and accommodations that Ms. Orlinsky previously provided, such as preferential seating, peer support, and repeating instructions.

54. The District appropriately designed the academic goals and RSP services to have Student master first grade level reading and language art skills. Student did not require specific math goals or RSP assistance because he performed at near grade level and would not require additional assistance until third grade when the math curriculum required more reading skills. Therefore, the District's February 13, 2006 IEP goals, accommodations and related services, properly addressed Student's academic deficits by focusing on his reading

and language art deficits, and were reasonably calculated to allow Student to make adequate educational progress.

Scientifically Based Curriculum

55. In developing a pupil's educational program, the district must provide a program that is based on peer-reviewed research to the extent practicable. The reading programs that Ms. Antu used in the RSP program, Reading Upgrade and Waterford, were scientifically based programs and designed to address Student's decoding, vocabulary, grammar and comprehension deficits. Student's criticism of the District's reading program was based on Parents' request that Student should be able to read and write at grade level by the time of the next annual IEP meeting.

Fine and Gross Motor Skills

56. As noted above, the District failed to conduct a needed OT assessment. At the February 13, 2006 IEP meeting, the District team members discussed Student's gross and fine motor deficits and documented them in his present levels of performance. The District wrote in the IEP that Student's gross motor skills were delayed compared to his peers and that he had difficulty climbing and using playground equipment. Regarding Student's fine motor skills, he had difficulty with printing, turning pages and tracking, which hampered his ability to keep up with his classmates. The District did not offer any OT goals or services to address Student's gross and fine motor deficits. The District only offered to have its OT and APE provider observe Student to determine whether the District needed to assess Student.

57. While he did not attend the February 13, 2006 IEP meeting, Randy Perkins, District APE provider, had previously worked with Student when providing APE services to a classmate. Ms. Perkins worked with the pupil on group play skills. Student demonstrated significant deficits in these sessions regarding his motor control, sequencing and planning, and had difficulty maintaining attention. Although Mr. Perkins never assessed Student, his observations established that Student required APE services based on the severity of his gross motor deficits at the time of the IEP meeting.

59. Regarding Student's fine motor skills, while Marie-Noelle Poulin, who provided OT services at Student's school, did not observe Student in his classroom until June 27, 2006, neither party disputed that her observations reflected Student's present levels of performance at the time of the February 16, 2006 IEP meeting.⁵ Ms. Poulin recommended simple changes to Student's body position while sitting after she observed him not properly positioned for fine motor tasks in his chair. Ms. Poulin also observed that Student did not properly grasp his pencil and gave Student a pencil grip to place over the pencil, which improved the legibility of his writing. Ms. Poulin recommended simple fine

⁵ The District provided Parents with a copy of Ms. Poulin's observation report and list of suggested fine motor activities right after the school year ended.

motor activities to improve Student's handwriting and visual motor skills, such as tracing exercises, art projects, games and puzzles.

59. At the time of the February 13, 2006 IEP meeting, Student required special assistance regarding his gross and fine motor skills to make adequate educational progress. The District's failure to conduct an OT assessment as part of Student's initial assessment prevented Mr. Perkins and Ms. Poulin from making recommendations to address Student's OT deficits. However, based on their observations, Student required OT goals and services, accommodations and in-class tasks. Therefore, the February 13, 2006 IEP was not reasonably calculated to permit Student to make adequate educational progress because the IEP did not address Student's gross and fine motor deficits.

Failure to Address Auditory Processing, Verbal Learning Memory and AT Needs

60. Student asserted that the February 13, 2006 IEP did not provide him with a FAPE because it did not address auditory processing, verbal learning and memory deficits. The District's psychoeducational assessment identified these unique needs for Student, and the District asserted that the February 13, 2006 IEP addressed all these deficits.

Auditory Processing

61. Regarding APD, the District developed communication goals that addressed this deficit. Student's APD prevented him from understanding classroom instructions. The goal for Student to repeat oral instructions and to ask for assistance when he did not understand the instruction addressed his APD. Student's inability to follow complex directions involved his APD, and the District goal for Student to follow two-to-three step directions addressed this deficit. Finally, the IEP provided for classroom accommodations, such as preferred seating, small group instruction and giving Student additional time for tests, addressed his APD. Accordingly, the IEP met Student's APD needs.

Verbal Learning

62. Student did not present evidence regarding his verbal learning deficits and how the February 13, 2006 IEP failed to address them. Student did not establish that the IEP did not provide Student with a FAPE because it did not meet Student's unique needs related to verbal learning.

Memory Deficits

63. Student's psychoeducational assessment indicated that Student had some weaknesses in working memory. The District's communication goals for Student to follow directions adequately addressed Student's memory deficits. Further, Student did not establish that the classroom accommodations, such as repeating instructions, small group

instruction and peer assistance, were not adequate. Therefore, the District appropriately met Student's memory needs in the IEP.

AT Services

64. As noted previously, Student did not establish that the District needed to conduct an AT assessment. At the time of the February 16, 2006 IEP meeting, the District provided Student with AT services so he could listen to books, which reinforced what he read. Student's writing deficits were not so severe that he required a computer to complete his assignments. Student did not establish that he required AT services to receive a FAPE.

Parents' IEE Request

65. An IEE is an assessment conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. Under certain conditions, a pupil is entitled to obtain an IEE at public expense. To obtain an IEE, the pupil must disagree with an assessment obtained by the public agency and request an IEE. Following the request for an IEE, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its assessment is appropriate, or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing that the assessment obtained by the parent did not meet agency criteria.

66. On March 24, 2006, the District sent Parents a letter that stated that Student was at risk for retention due to his lack of academic progress. The District routinely sent these letters for any student who was not making adequate educational progress. Mother responded on March 28, 2006. She was upset about receiving the letter and expressed her desire that the District needed to get Student to read at grade level as quickly as possible. Additionally, Mother requested a neuropsychological IEE because she believed that Ms. Smith's assessment did not fully analyze Student's autistic-like behaviors and other possible reasons why Student was not reading and writing at grade level.

67. The District responded to Mother's letter by scheduling an IEP meeting for April 28, 2006. At the April 28, 2006 IEP meeting, the District team members informed Mother that it sent the risk-for-retention letter because the letter allows the District to draw on other funds to provide additional assistance to students. However, the District team members agreed retention would not be beneficial for Student.

68. Mother stated that the psychoeducational assessment was not thorough enough and requested further assessments. The District did not respond to Mother's prior IEE request, and only agreed to draft another assessment plan. Mother agreed to defer discussion on the District's reading program until after the assessments were performed.

69. At the April 28, 2006 IEP meeting, the District made no mention of whether it had completed the OT and APE observations it promised in the February 13, 2006 IEP. On

May 8, 2006, the District presented Mother with an assessment plan. The May 8, 2006 assessment plan included an APE assessment, but no fine motor assessment. Parents did not consent to the District's May 8, 2006 assessment plan.

70. On May 22, 2006, Mother wrote Sean Goldman, the District's then Administrator of Pupil Services, who oversaw the District's special education program. In this letter, Mother requested an IEE because she believed that Ms. Smith's psychoeducational assessment was not sufficiently comprehensive. Mother requested further testing in the areas of education, speech and language, OT, psychological, social skills, a functional behavioral assessment, identification of Student's learning disorder and neurological testing.

71. The District did not respond to Mother's letter until July 11, 2006, because of an emergency in Mr. Goldman's family. In Mr. Goldman's response, the District agreed to conduct the IEE regarding possible learning disabilities, academic deficits, social-emotional deficits, cognitive ability and possible autism. The District contracted with Karen Schiltz, Ph.D., to conduct a neuropsychological assessment. The District did not agree to an OT IEE because the District first wanted to conduct its own OT assessment and requested that Mother consent to the District's previous assessment plan. Mr. Goldman also directed Mother to contact Ronald Moon, the interim Director of Pupil Services, during his absence.⁶

72. Regarding the neuropsychological IEE request, the District's failure to timely respond did not deny Student any educational benefits or significantly impair Parent's ability to participate in Student's educational decision-making because Dr. Schiltz's assessment would not have been completed until the end of SY 2005-2006 if the District timely responded to Parents' IEE request. Therefore, the District would not have been able to implement the IEE findings until the next school year. Regarding Student's request for an OT IEE, the District denied Student a FAPE because its delay in conducting its own assessment or granting Parents' request for an IEE denied Student an educational benefit because he required OT services.

Need to Obtain Consent for OT and APE Observations

73. Student asserted that the District assessed him without parental consent when the District conducted its OT and APE observations. At the February 13, 2006 IEP meeting, the District agreed to conduct OT and APE observations to evaluate whether the District needed to conduct a comprehensive OT assessment. Mother consented to these observations.

74. Student asserted that the District failed to obtain Parents' approval through a formal assessment plan for the OT and APE observations. However, neither Ms. Poulin nor Mr. Perkins assessed Student. Ms. Poulin observed Student in his class and provided him with assistance as she would with any child who needed some assistance. Mr. Perkins

⁶ Mr. Goldman had been appointed the Assistant Superintendent of Human Resources.

worked with Student as part of the normal rotation of students that Ms. Orlinsky sent for the APE session for another child. Finally, Mother agreed at the February 13, 2006 IEP meeting to these informal observations. Therefore, the District's observations were not an assessment for which the District needs Parents' consent.

Dr. Schiltz's Neuropsychological Assessment

74. Dr. Schiltz assessed Student on July 24, 2006. Dr. Schiltz interviewed Mother, along with having her complete a background questionnaire. Dr. Schiltz also reviewed the District's psychoeducational and speech and language assessments and the February 13, 2006 IEP. Dr. Schiltz's report confirmed Ms. Smith's findings that Student has an APD and did not provide any further insight regarding Student's APD than what Ms. Smith previously reported.⁷ Dr. Schiltz recommended accommodations that mirror those used by Ms. Orlinsky, who provided Student with preferential seating, repeated verbal instructions, visual cues and making sure Student understood the directions. Dr. Schiltz did make suggestions for various activities to improve Student's auditory discrimination.

75. Regarding Student's cognitive ability, Dr. Schiltz found Student to be borderline mentally retarded. Ms. Smith explained that Student's shyness could have negatively affected his performance and caused the lower score. The test results do confirm, however, that Student's cognitive ability is no higher than the low average range.

76. Regarding Student's social skills, Dr. Schiltz recommended that Student receive counseling because Student was withdrawing from social interaction with his classmates, related to his speech and language and cognitive deficits. Mother did not report to Dr. Schiltz that other students were bullying Student.

77. Dr. Schiltz's findings regarding Student's reading deficits were consistent with the District's assessment and observations by Mr. Orlinsky and Ms. Antu. The recommendations Dr. Schiltz made that Student learn sight words because his APD made learning reading by phonics more difficult corresponded to Ms. Antu's work with Student. Dr. Schiltz also recommended that the District use a scientifically researched reading program, which Ms. Antu was doing. Dr. Schiltz also recommended using visual cues so that Student would associate a spoken word to an actual object, which the District did in its goals and classroom accommodations.

⁷ Dr. Schiltz's assessment report was admitted into evidence as administrative hearsay, pursuant to California Code of Regulations, title 5, section 3082, subdivision (b). It supplements and explains testimony by Mother, Mr. Moon, Ms. Antu, Ms. Orlinsky and Ms. Smith regarding Student's present levels of performance, a September 14, 2006 meeting between Mr. Goldman, Mr. Moon and Mother and the September 27 and October 17, 2006 IEP meetings.

78. Regarding Student's writing deficits, Dr. Schiltz recommended approaches similar to those used by the District to address Student's reading deficits, such as using visual cues. Additionally, she recommended that the District use a spelling list for constant repetition. Regarding math, Dr. Schiltz's report corroborated the District's finding that Student's deficits related to following oral instructions and applied problems that involved reading. Dr. Schiltz also observed Student's fine and gross skills and recommended that the District conduct a full OT assessment.

Failure to Inform Parents of No Speech and Language Provider

79. Mother met with Mr. Goldman and Mr. Moon on September 14, 2006, to discuss Dr. Schiltz's report and concerns raised by Mother. Also discussed at the September 14, 2006 meeting was the fact that the District was not providing Student with speech and language services because Ms. Correia did not return from maternity leave and the District had not found a replacement. The District had not filled the speech and language specialist position as of September 14, 2006. The District did not provide Parents with prior written notice at the start of the school year because it did not have a speech and language specialist to provide Student with speech and language services.

September 27 and October 27, 2006 IEP Meetings

Attendance of District Team Members

80. A general education teacher is required to participate in an IEP team meeting if the student is participating in the regular education environment. Additionally, a district must ensure that special education providers needed to discuss a student's program attend the IEP meeting. The parents and school district may agree to excuse a required member of an IEP team from attending a meeting if the member's area of curriculum or service will not be discussed.

81. Ms. Orlinsky⁸ did not attend the October 17, 2006 IEP meeting because of a family emergency, and Andrea Tribble did not attend because she was no longer the classroom's substitute teacher. The District needed to have a general education teacher attend the IEP meeting. However, their absence did not significantly impede Mother's ability to participate in Student's educational decision-making process or deprive Student of an educational benefit because both Ms. Orlinsky and Ms. Tribble presented information regarding Student's progress, deficits and present levels of performance on September 27, 2006. Additionally, Ms. Antu worked daily with Student's general education teacher and had information regarding Student's classroom performance that she could share with the IEP team. Mother did not state either at the IEP meeting or in her testimony that Ms. Orlinsky's

⁸ Ms. Orlinsky was also Student's third grade teacher. However, Ms. Orlinsky was on maternity leave at the start of SY 2006-2007. Andrea Tribble was the long term substitute until Ms. Orlinsky returned to teaching Student's class in the beginning of October.

presence was needed at the October 17, 2006 IEP meeting. Therefore, while the District committed a procedural violation, the absence of a general education teacher at the October 17, 2006 IEP meeting did not constitute a substantive denial of FAPE because it did not prevent Mother from meaningfully participating at the IEP meeting.

82. Ms. McCully could not attend the entire October 17, 2006 IEP meeting, and was excused by the IEP team after she presented her proposed goals and service recommendations. After Ms. Antu presented her revised academic and new social-emotional goal, Ms. McCully presented Student's present levels of performance and proposed new annual communication goals through October 2007. Although Ms. McCully left before the end of the IEP, her absence did not significantly impede Mother's ability to participate in the IEP process because Ms. McCully had presented all relevant information and Mother did not express that Ms. McCully's continued presence was needed at the IEP meeting and that her absence significantly affected Mother's ability to participate in the IEP meeting.

October 17, 2006 IEP Reading and Writing Goals

83. Student asserted that the District's proposed reading and math goals were not reasonably calculated to allow him to make meaningful educational progress. Ms. Antu presented Student's progress on his academic goals as of June 2006 and September 22, 2006, and his present levels of performance. This was the first time that the District had informed Parents of Student's progress. Student made adequate progress in reading common first grade sight words, reading comprehension at the first grade level, nearly met the annual goal to write complete sentences, and met the reading fluency and accuracy goal. Both Ms. Tribble and Ms. Orlinsky stated that Student made good progress, but continued to struggle with his reading performance. Because Student had met the reading fluency and accuracy goal, Ms. Antu proposed a new reading fluency and accuracy goal that Student read at the second grade level with 50 percent accuracy by March 2007. Mother stated at the September 27, 2006 IEP meeting that she felt that the new goals were not sufficiently specific, so Ms. Antu agreed to revise the proposed goals and presented these revised goals at the October 17, 2006 IEP meeting.

84. Regarding Student's academic goals, at the October 17, 2006 IEP meeting, Ms. Antu modified the sight word goal to be more specific in response to concerns by Mother. The new goal was for Student to identify correctly 200 sight words at the first grade level with 100 percent accuracy by March 2007. This goal followed Dr. Schiltz's recommendation that Student learn sight words due to his decoding deficits. Ms. Antu modified the reading comprehension goal for Student to read a first grade passage and then to answer with 80 percent accuracy five questions or restate five facts and details from the passage. She added a new reading comprehension goal for Student read independently a first grade level selection and the answer with 80 percent accuracy ten who, what, when, where and how questions.

85. Regarding reading fluency, Ms. Antu revised the goal to have Student to read 47 words per minute with 80 percent accuracy. Ms. Antu based the new goal on Student's

reading fluency as measured by the reading theme tests used for general education students. She modified Student's writing goal for Student to write independently two to four complete three to five word sentences with correct capitalization, grammar and punctuation as measured by his work samples.

86. Therefore, the District's proposed changes to Student's reading and writing goals properly addressed Student's unique needs in these areas, reflected his present levels of performance and were reasonable calculated to allow Student to make adequate educational progress.

October 17, 2006 IEP Math Goals

87. Ms. Antu added a math goal based on concerns raised by Ms. Tribble. Student had difficulty with applied math problems, which was expected because of the additional complexity of third grade math curriculum. The math goal proposed to have Student show progress or master with 30 percent accuracy third grade power math standards as measured by non-standardized tests or 60 percent accuracy as measured by work samples. Therefore, the District's proposed math goals properly addressed Student's unique needs in this area, reflected his present levels of performance and were reasonable calculated to allow Student to make adequate educational progress.

October 17, 2006 Speech and Language Goals and Services

88. Student asserted that the District did not offer sufficient speech and language goals and services to meet his unique needs in the October 17, 2006 IEP. Ms. McCully reported briefly on Student's progress on his speech goals at the September 27, 2006 IEP meeting, but did not have a written progress report for Mother. Because Ms. McCully had her first therapy session with Student that day, she had not time to decide whether she needed to develop new communication goals for Student.

89. Ms. McCully developed the communication goals based on information presented at the prior IEP meeting regarding Student's problems communicating with his peers and her working with Student. Ms. McCully created a goal to work on Student's oral motor range of motion and ability to use his tongue during speech to improve his articulation and to assist him in communicating with his peers. Ms. McCully proposed modifying the communication goal involving "l" sound production to move from one syllable words to more complex multisyllabic words, which she, the classroom teacher and RSP teacher could work and measure his progress in all settings. Ms. McCully also drafted a goal regarding Student's ability to produce "l" sounds during his speech and language session.

90. To work on Student's social communication, Ms. McCully proposed a goal to work on Student maintaining personal boundaries, how to properly approach his peers on the playground and how to inform others when he wanted to be left alone. Regarding Student's ability to follow directions, he could follow two-step verbal directions, so Ms. McCully proposed to modify the follow two-to-three step directions to follow two-step directions and

repeat the direction in the correct sequence. The District modified this goal to address Student's APD and problem with properly sequencing verbal directions, which would help Student with directions that are more complex. Ms. McCully recommended adding an additional 25-minute individual speech and language session a week because of the additional communication goals.

91. Therefore, the District's proposed changes to Student's speech and language goals and services properly addressed Student's unique needs in this area, reflected his present levels of performance and were reasonable calculated to allow Student to make adequate educational progress.

October 17, 2006 Social-Emotional Goals and Services

92. Student asserted that the District failed to address his social-emotional needs in the October 17, 2006 IEP, and ignored that other students bullied him at school. At the September 27, 2006 IEP meeting, Mother mentioned for the first time concerns that other students were bullying Student. Mother did not mention this matter at the prior IEP meeting. Mother did not express her concern about bullying to Ms. Orlinsky, Ms. Antu or any other District employee before this IEP meeting. Mr. Morrison and Ms. Orlinsky observed Student on campus and did not see others bully Students. They did notice that Student had some difficulty interacting with his peers, but Student never told them about any bullying.

93. Based on concerns raised by Mother regarding Student's problems with communicating with his peers, Ms. Orlinsky's observations and Dr. Schiltz's recommendations, the District proposed a social emotional goal. The goal had Student use appropriate verbal and non-verbal social initiation cues when interacting with his peers or requesting to join a playgroup in the classroom or the playground. Student's RSP and classroom teacher and speech and language specialist were responsible to work with Student on this goal. Student's progress was to be measured by teacher observation with Student having one to two weekly positive interactions. Therefore, the District's proposed changes to Student's social-emotional goals and counseling services properly addressed Student's unique needs in this area, reflected his present levels of performance and were reasonable calculated to allow Student to make adequate educational progress.

RSP and Counseling Services

94. Regarding the amount of RSP services, the District increased this service to address Mother's concerns and Student's difficulties with math. Therefore, the District offered one hour a day of RSP instruction for language arts and another hour for math, five days a week. Regarding Student's social-emotional deficits, the District agreed with Dr. Schiltz's recommendation and offered counseling twice a month, for one hour sessions.

95. Mother did not consent to the District's October 17, 2006 IEP offer because she did not feel that the IEP provided Student with sufficient intensive services and goals to address his academic, speech and language and social-emotion deficits. Additionally,

Mother disagreed with the District's proposed reading and writing goals because the District based the goals on Student mastering first grade levels by March 2007, which would still leave Student two grade levels below his classmates.

96. The District's October 17, 2006 IEP was reasonably calculated to allow Student to make adequate educational progress because it addressed his reading, writing, math, speech and language and social-emotional deficits, along with his APD. The District took into consideration Student's cognitive deficiencies by focusing on Student mastering first grade skills before moving to second grade skills. The District drafted new goals based on Dr. Schiltz's report, Student's progress since the February 17, 2006 IEP meeting and information presented by Mother. The District offered Student more intensive goals and services to address his unique needs that would allow Student to make adequate progress with the general education curriculum with appropriate accommodations and modifications.

OT, APD and AT Assessments for SY 2006-2007

97. Student contended that the District needed to perform OT, APD and AT assessment during SY 2006-2007. At both the September 27 and October 17, 2006 IEP meetings, the District agreed to perform an OT assessment to examine Student gross and fine motor deficits. The District gave Mother an OT assessment plan at the October 17, 2006 meeting that covered both Student's gross and fine motor deficits. Mother never returned assessment plan to the District or Ms. Poulin to state whether she agreed to the OT assessment. Ms. Poulin made repeated attempts with Mother to have her return the form. Ms. Poulin sent a new assessment plan to Mother on or about November 21, 2006, because Mother said that she did not receive the first assessment plan. Mother subsequently stated that she mailed the second assessment plan back to Ms. Poulin with her consent to the OT assessment. Ms. Poulin never received a signed assessment plan and her notes made concurrent with her attempts to contact Mother establish that she never received a signed assessment plan. Therefore, the District made a proper offer to conduct a needed OT assessment, which Parents did not provide consent.

98. Regarding Student's need for further assessments in the area of APD, as discussed previously, Dr. Schiltz's assessment confirmed Ms. Smith's findings regarding auditory processing deficits. Student asserted that only a licensed audiologist could conduct an appropriate APD assessment, but there was no evidence to support this contention. Additionally, Student did not demonstrate how Ms. Smith's and Dr. Schiltz's assessments failed to adequately examine Student's APD. Therefore, the District assessed Student in this area of suspected disability.

99. Regarding Student's AT assessment request, Student made adequate progress on the February 13, 2006 IEP goals with the level of support he received in the classroom and RSP room. In both rooms, Student had access to computer technology to assist him, plus books on CD. While Student had problems with his handwriting, these deficits were not so significant that Student required AT services to complete classroom and homework assignments. Therefore, the District did not have to conduct an AT assessment.

February 9, 2007 IEP Meeting

100. The District convened Student's annual IEP meeting on February 9, 2007, and made an offer of goals, services and placement. Mother did not consent to this IEP. Student asserts that the District's IEP offer did not meet his unique needs because the District continued to fail to offer him the intensive services he required and ignored that other students continued to bully him.

Attendance of District IEP Team Members

101. Student asserts that Ms. McCully and Ms. Poulin needed to attend this IEP meeting. Ms. McCully did not attend the IEP meeting before Mother unilaterally left after Ms. Antu presented her proposed goals and RSP services and before the District presented the speech and language goals and services. Therefore, Ms. McCully's presence was not necessary during the portion of the IEP meeting that Mother attended. Regarding Ms. Poulin's attendance, she was not needed at the IEP meeting because Mother refused to sign the District's proposed OT assessment. Because Mother had not signed the OT assessment plan, there was no reason for Ms. Poulin to attend this IEP meeting as she had nothing more to present beyond the information in her June 2006 observation note. Therefore, the District had all required team members in attendance.

Math, Reading and Writing Goals

102. Student asserted that the District's proposed academic goals failed to address his unique needs. Ms. Antu presented Student's progress on his goals. Student met the reading fluency and accuracy goal because he could orally read passages at first grade level with 90 percent accuracy and at the second grade level with 80 percent accuracy. Student met the sight word goal as he could read common first grade words at 100 percent accuracy and had nearly mastered a second grade sight word list of nearly 200 words. Student met the reading comprehension goal because he was answering questions after reading a first grade level selection with 90 percent accuracy, and at 60 percent accuracy with second grade selections. The only academic goal that Student did not meet was the writing goal because Student still needed teacher prompting and guidance to write with proper grammar, punctuation and sentence structure. Part of Student's failure to meet this goal related to his difficulty with penmanship because Student required OT assistance with his fine motor skills. Student's progress exceeded the District's reading goals and established that the District was properly working on Student's reading deficits. Student made progress on the writing goal and he would have made more progress if the District had provided Student with services sooner to address his fine motor deficits.

103. At the February 9, 2007 IEP meeting, the District again proposed a math goal. The goal was similar to the goal presented at the October 17, 2006 IEP meeting, except that Student would show progress or mastery at the fourth grade level. The District based this goal on Student's present math abilities in Ms. Orlinky's class. The proposed goal was reasonably calculated to allow Student to make adequate educational progress.

104. The District increased the difficulty of the reading comprehension goal to reflect Student's progress. The first proposed reading comprehension goal required Student to read a second grade level selection and answer 10 comprehension questions with 80 percent accuracy. The second proposed reading comprehension goal required Student to read a third grade level selection and answer five comprehension questions with 60 percent accuracy. For reading fluency, the District proposed that Student read at the second grade level at 94 words per minute with 80 percent accuracy. For sight words, Student was required to read 300 high frequency sight words at 100 percent accuracy, which is at the third grade level. The writing goal slightly increased the difficulty for Student by requiring him to write three-to-five words per sentence in a paragraph form with the same four-to-six complete sentences as before with correct punctuation, grammar and grammar and no more than two errors per sentence. The proposed goals were reasonably calculated to allow Student to make adequate educational progress.

105. Ms. Antu appropriately developed Student's academic goals based on his present levels of performance. Therefore, the District's proposed academic goals were designed to meet Student's unique needs and to permit Student to make adequate educational progress based on Student's progress he had made in the past year.

Social-Emotional Goals and Counseling Services

106. As with the October 17, 2006 IEP, Student asserted that the February 9, 2007 IEP failed to address social-emotional deficits. Ms. Antu also drafted two social-emotional goals. One goal was the same social-emotional goal from the October 17, 2006 IEP for Student to use appropriate verbal and non-verbal social initiation cues with his peers. The new social-emotional goal was for Student to increase his peer interaction in a social context by using proper verbal communication to initiate his participation. This new goal properly addressed the problem that Ms. Morrison and school staff observed with Student having difficulty initiating verbal contact with his classmates on the playground. Therefore, the proposed goals adequately addressed Student's unique needs.

107. Additionally, the District continued to offer counseling, two times a month, one hour a session, to address Student's social-emotional deficits. The District's offer was sufficient to meet Student's needs due to his anxiety, withdrawal and attitude towards school, as observed by Ms. Orlinsky, Ms. Antu and Ms. Antu, which had not changed since the October 17, 2006 IEP meeting.

Speech and Language Goals and Services

108. Student continued to assert that the District failed to adequately address his speech and language deficits. The District's proposed goals were the same as those that Ms. McCully presented at the October 17, 2006 IEP meeting. Because Mother did not consent to the October 17, 2006 IEP, Ms. McCully continued to implement the February 13, 2006 goals. Ms. McCully could not work on new skills and therefore Student needed the same goals as previously offered because Student had made adequate progress on the

February 13, 2006 goals. The District offered again individual speech and language services, three times a week, 25 minutes a session. Student show that the District's proposed speech and language goals and individual sessions were not sufficient to meet his unique needs. Therefore, the District's proposed speech and language goals and therapy sessions provided Student with a FAPE.

RSP Services

109. For RSP support, the District offered Student 45 minutes for reading and language arts support and 45 minutes for math. The IEP that the District provided to Mother when she left the meeting had only 45 minutes a day for reading and language arts as the District added the 45 minutes for math after Mother left the IEP meeting. Although the District's offer of RSP support was 30 minutes less a day than its October 17, 2006 IEP, the District's offer was sufficient because of the progress that Student had made in reading, language arts and math in the past year with only 45 minutes a day of reading and language arts RSP support.

110. The District's February 9, 2007 IEP was reasonably calculated to allow Student to make adequate educational progress because it addressed his reading, writing, math, speech and language auditory processing and social-emotional deficits. Student made adequate progress with the February 13, 2006 IEP, and the District modified the goals and services to reflect Student's present levels of performance and the increased difficulty of his curriculum. The District's offered more intensive academic and speech and language goals and services Student to address his unique needs that would allow Student to make adequate progress with the general education curriculum with appropriate accommodations and modifications.

Parent Participation at the IEP Meeting

111. Student asserted that the District did not consider information Mother presented at the February 13, 2007 IEP meeting. Mother left the IEP meeting after Ms. Antu presented her proposed goals. The District was not able to present its proposed communication goals, counseling and speech and language services and how much RSP support Student would receive. Mother signed the IEP only to acknowledge that she attended and presented at the meeting a 20-page letter of educational concerns and comments. Parents felt that the District was not taking adequate steps to prevent other Student's from bullying Student, and wanted the District to provide a home based, independent study program for Student. Parents subsequently removed Student from school on February 13, 2007.

112. Mother's conduct in leaving the February 9, 2007 IEP meeting early and her request for independent study indicates that Mother did not intend to participate in the IEP meeting because she already had decided the educational program that she wanted the District to offer. When the District continued to offer a program similar to Student's existing program, and disagreed with her belief that Student was bullied at school, she decided not to

participate any further in the IEP meeting. The fact that the District did not offer Student that educational program that Mother requested does not mean that the District did not consider the information Mother presented. Therefore, the District did not deny Mother's right to participate at the IEP meeting.

Bullying

113. Mother first informed the District of possible bullying at the September 27, 2006 IEP meeting. Mother did not inform Ms. Orlinsky, Ms. Smith, Mr. Morrison, Ms. Morrison, Mr. Goldman, or Dr. Schiltz of any bullying against Student. At the time of the September 27 and October 17, 2006 IEP meetings the District was aware of Student's problems with initiating social contact with his classmates and him beginning to withdraw. In response to Mother's concern about bullying, Ms. Morrison spoke to school staff and observed Student at lunch and on the playground. Ms. Morrison supervised the cafeteria every day. No one at the school reported to Ms. Morrison any incidents of bullying involving Student, nor were there documented incidents at school.

114. The evidence did not establish that Student was bullied at school. Mother's testimony about statements Student made to her regarding bullying at school are not corroborated by direct evidence, and not sufficient to support the claim. In both the October 17, 2006 and February 9, 2007 IEPs, the District proposed to address Student's social-emotional deficits through counseling and the social-emotional and communication goals, which were properly designed to assist Student to interact appropriately with his peers. Therefore, the District met Student's social-emotional needs.

Speech and Language Therapy Sessions

115. Student asserts that the District failed to provide him all the required speech and language sessions, and used unqualified personnel to provide some of these sessions. Student missed his speech and language therapy sessions at the beginning of SY 2006-2007 because the District did not have specialist to provide services at Student's school. The District hired Ms. McCully, who began her sessions with Student on September 27, 2006. Ms. McCully made up the missed sessions, and her speech and language service logs show that Student received the speech and language services as called for in the February 13, 2006. While Ms. McCully missed some sessions, she made up the missed sessions. Additionally, the District did not use a special and language assistant to provide Student with direct speech and language sessions. Ms. McCully used the assistant in a few sessions to help her. Therefore, the District did not deny Student a FAPE.

Speech and Language Logs

116. Student contends that the District violated Parents' procedural rights by not providing them with copies of his speech and language logs. Mother made a request for Student's educational records on September 21, 2006. The request did not indicate whether Mother requested a copy of the speech and language logs. Mother formally requested a copy

of the speech and language logs after she removed Student from school. Mother continued to insist after her request that the District never gave her any of Student's speech and language logs. However, at hearing, Student produced the original of Ms. McCully's speech and language logs. Therefore, the District provided Parents with Student's speech and language logs and did not deny Parents' procedural rights.

Remedies

117. The District failed to assess Student in all areas of suspected disability by failing to assess his gross and fine motor skills. Student continued to have difficulty with gross motor tasks during physical education and when using play equipment until the time Mother removed him from school. The District did not provide Parents with an adequate assessment plan until the October 17, 2006 IEP meeting, which Mother never signed and returned to the District. Because the District remedied its error by presenting an adequate OT assessment plan on October 17, 2006, any remedies are limited from the February 13, 2006 IEP meeting to January 18, 2007. If Parents consented to the assessment, January 18, 2007 is the 60th day for the District to complete the assessment and hold an IEP meeting to discuss the assessment. School was not in session from November 18 through 26, 2006 and December 22, 2006 through January 15, 2007, so these days do not count in determining the 60 days.

118. CAVA conducted a complete OT assessment on April 19 and May 1, 2007. Based on the assessment, CAVA is providing Student individual OT services, 30 minutes a week, to address his gross and fine motor deficits through a private service provider. The type of service that CAVA provides Student corresponds to the type of services that Ms. Poulin and Mr. Perkins thought might be appropriate if they had the opportunity to assess Student. Based on the testimony of Ms. Poulin and Mr. Perkins, 30 minutes a week would have been a reasonable level of OT service to address Student's gross and fine motor deficits at the time of the February 13, 2006 IEP meeting through the October 17, 2007 IEP meeting.

119. Regarding the District's failure to timely respond to Mother's two requests for an IEE, the District's delay did not deny Student a FAPE because Dr. Schiltz's assessment supported the educational program that the District offered. Additionally, even if Dr. Schiltz assessed Student sooner and the District and Parents meet before the end of SY 2005-2006, Parents would not have agreed to the District's proposed IEP based on their refusal to consent to the October 17, 2006 IEP offer. Therefore, the District's delay did not deny any educational benefits or significantly impede Parents' ability to participate in Student's educational decision-making progress.

LEGAL CONCLUSIONS

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49, 62 [126 S.Ct. 528], the party who filed the request for a due process hearing has the burden of persuasion at the due process

hearing. Student filed for this due process hearing and bears the burden of persuasion by the preponderance of the evidence.

2. A child with a disability has the right to a FAPE under the IDEA. (Ed. Code, §§ 56000, 56026; 20 U.S.C. § 1412(a)(1)(A).) FAPE is defined as special education, and related services, that are available to the student at no cost to the parent or guardian, that meet the state's educational standards, and that conform to the student's IEP. (Ed. Code, § 56031; Cal. Code Regs., tit. 5, § 3001, subd. (o); 20 U.S.C. § 1401(9).) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (Ed. Code, § 56363; 20 U.S.C. § 1401(26).)

3. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 206-07 [73 L.Ed.2d 690](*Rowley*).) Second, the tribunal must decide whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) The Ninth Circuit has referred to *Rowley's* "some educational benefit" simply as "educational benefit" (See, e.g., *M.L. v. Fed. Way Sch. Dist.* (9th Cir. 2004) 394 F.3d 634, 645.) It has also referred to the educational benefit standard as "meaningful educational benefit." (*N.B. v. Hellgate Elementary School Dist.* (9th Cir.2007) 541 F.3d 1202, 1212-1213; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

4. A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23*, (9th Cir. 1992) 960 F.2d 1479, 1483-1484.) Recent Ninth Circuit Court of Appeals cases have confirmed that not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033, fn.3; *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) To deny a student a FAPE, the procedural violation must cause a loss of an educational opportunity or significantly restricted parental participation parents' in their child's educational decision-making process. (*L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2009) ___ F.3d. ___, ___, 2009 WL 349795, *8.)

5. An IEP team must consider the concerns of the parents or guardians for enhancing the education of the pupil when developing a pupil's IEP. (Ed. Code, § 56341.1, subd. (a)(2).) In *W.G. v. Board of Trustees of Target Range Unif. Sch. Dist. No. 23.*, *supra*, 960 F.2d at p.1483, the Ninth Circuit recognized the IDEA's emphasis on the importance of meaningful parental participation in the IEP process. An LEA's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.)

Was the District's Psychoeducational Assessment Timely Completed? (Issue 1A)

6. To start the process of assessment the school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).)⁹ The notice must consist of the proposed assessment plan and a copy of parental and procedural rights under IDEA and companion state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must appear in a language easily understood by the public and the native language of the student, explain the assessments that the district proposes to conduct, and state that the district will not implement an individualized education program without the consent of the parents. (Ed. Code, § 56321, subds. (b)(1)-(4).) The district must give the parents the proposed assessment plan within 15 days of the referral for assessment. (Ed. Code, § 56321, subd. (a).) The parents have 15 days after receipt of the assessment plan to respond. (Ed. Code, § 56321, subd. (c).) An IEP meeting must be held within 60 days of the receipt of parental consent to the assessment plan, not counting days between the student's school sessions and vacations in excess of five schooldays. (Ed. Code, § 56043, subds. (b), (c) & (f)(1).) Within 30 days of a determination that the student is eligible for special services, the school district must hold a meeting to develop the student's initial IEP. (Ed. Code, § 56344, subd. (a).); 34 C.F.R. § 300.301(c)(1)(ii) (2006).)

7. Pursuant to Factual Findings 4, 7 and 8, Ms. Smith did not timely complete her psychoeducational assessment and the District did not timely hold an IEP meeting to discuss this assessment and Student's eligibility for special education services. Mother signed the assessment plan on October 13, 2005, and the District needed to complete the assessment and hold the initial IEP meeting by December 15, 2005. The District held the IEP meeting regarding Student's initial eligibility on February 13, 2006, when the District also made its offer of services and placement. While the District initial IEP meeting was not timely, the District did timely hold the IEP meeting to make its initial offer of services and placement. (Factual Finding 9.) The District's delay constituted a procedural violation. However, the District's delay did not deny any educational benefit because the District made a timely IEP offer of services and placement. (See *Student v. Fremont Unified School District* (2007) OAH Case No. 2006110101, pp. 24-25.)

Did the District Assess Student in All Areas of Suspected Disability? (Issue 1B)

8. The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (Ed. Code, § 56320, subds. (e) & (f); 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b)(2) & (c)(4) (2006).) A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial

⁹ An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

of a FAPE. (*Park v. Anaheim Union High School District, et al., supra*, 464 F.3d at pp. 1031-1033.)

9. Pursuant to Factual Findings 5, 6 and 22 through 24, the District needed to conduct an OT to examine Student's gross and fine motor skill deficits. The District knew of Student's OT deficits at the October 3, 2005 SST meeting, and his deficits were preventing him from accessing the general education curriculum. Student gross motor deficits made it hard for him to participate in physical educational due to his lack of motor control and motor skill planning. Student's fine motor skills made it difficult to keep up with his peers on writing assignments and hard for others to read his work. Therefore, Student's gross and fine motor skills were an area of suspected disability that the District needed to assess. The District did not present an adequate OT assessment plan to Parents until October 17, 2006.

10. Regarding Student's need for an APD assessment, pursuant to Factual Findings 16 and 25, the District did not need to conduct any further assessment in this area beyond its psychoeducational assessment. Ms. Smith's assessment appropriately examined Student's APD and the District did not need to have a licensed audiologist conduct an assessment.

11. Pursuant to Factual Findings 26 and 27, the District did not need to conduct an AT assessment. While Student had auditory processing and fine motor skill deficits that made the use of AT devices beneficial, his deficits were not so significant to require a distinct AT assessment. During SY 2005-2006, the District was providing Student with AT devices to assist him, and he was able to make adequate progress with this assistance.

Did the District Provide Parents with Copy of the Parental Rights Form (Issue 1C)

12. A school district must provide parents with a copy of the procedural safeguards at least once a year, as well as upon the initial referral or parent request for assessment, the first occurrence of filing a request for due process hearing, or parent request. (§ 1415(d)(1)(A); Ed. Code, § 56301, subd. (d)(2).) The procedural safeguards must include a full explanation, in an easily understandable matter, of the procedural safeguards including, among other things, the requirements for unilateral placement by parents of pupils in private or non-public schools at public expense. (§ 1415(d)(2); Ed. Code, § 56321.)

13. Student asserts that the District never provided Parents with a copy of the procedural safeguard notice. However, pursuant to Fact Findings 10 and 33, the District provided Parents with the required notice.

Did the District Violate Procedural Rights at the February 13, 2006 IEP Meeting Regarding Parent Input and its Failure to Provide Parents with Relevant Documents? (Issues 1D and 1E)

14. A public agency must ensure that the IEP team for each child with a disability includes the parents of the child. (34 C.F.R. § 300.321(a)(1); Ed. Code, § 56341.) Each

public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate. In developing each child's IEP, the IEP team must take into consideration the concerns of the parents. (34 C. F. R. § 300.324(a); Ed. Code, § 56341.1, subd. (a)(2).)

15. A copy of an assessment report must be given to a parent. (Ed. Code, § 56329, subd. (a)(3).) There is no requirement that it be provided before the IEP meeting at which it is discussed.

16. A school district that predetermines the child's program and does not consider the parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 107 LRP 37880, 48 IDELR 31.) The test is whether the school district comes to the IEP meeting with an open mind and several options, and discusses and considers the parents' placement recommendations and/or concerns before the IEP team makes a final recommendation. (*Hanson v. Smith*, (D. Md. 2002) 212 F.Supp.2d 474, 486; *Doyle v. Arlington County Sch. Bd.* (E.D.Va. 1992) 806 F.Supp. 1253, 1262.) School officials and staff do not predetermine an IEP simply by meeting to review and discuss a child's evaluation and programming in advance of an IEP meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693 fn.3.)

17. Pursuant to Factual Findings 29 through 34, the District did not deny Parents' procedural rights to meaningfully participate in the February 13, 2006 IEP meeting even though Mother did not have her own copy of the draft IEP or psychoeducational assessment report. Regarding the draft IEP, the District had one copy for all IEP team members to review, including Mother. The District went over in detail the specifics of its offer and was willing to discuss changes. Regarding the psychoeducational assessment, the District did not have a copy for any of the IEP team members, which by itself is not a procedural violation. Additionally, Ms. Smith went over her findings and recommendations in sufficient detail at the IEP meeting. Student did not establish that Mother's participation would have change if she had a copy of psychoeducational assessment at the IEP meeting or that he lost an educational benefit. Finally, while the District team members met before the IEP meeting and drafted a proposed IEP, the District did consider Parents' input regarding Student's abilities and educational needs during the assessment process and at the IEP meeting. The fact that Parents subsequently disagreed with the District's offer after giving their consent does not mean that the District did not listen to Mother's input at the IEP meeting. Therefore, the District did not deny Parents' procedural rights.

Did the February 13, 2006 IEP Address Student's Unique Needs and Was it Reasonably Calculated to Allow Student to Make Adequate Educational Progress? (Issues 1F, 1G, 1H and 1I)

18. In *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 “sufficient to confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) An IEP must be reasonably calculated to allow the student to obtain educational benefit; it does not guarantee a student’s success. (*CJN v. Minneapolis Public Schools* (8th Cir. 2003) 323 F.3d 630, 642.)

19. As long as a school district provides an appropriate education, the methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208; see also, *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141; *Pitchford v. Salem-Keizer School District* (D. Ore. 2001) 155 F.Supp.2d 1213, 1230-1232; *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84.) Courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*T.B., supra*, 361 F.3d at p. 84.)

20. Title 34 Code of Federal Regulations, part 300.320(a)(4) provides that IEPs shall include a statement of the special education and related services and supplementary aids and services to be provided to the student, based on peer-reviewed research to the extent practicable. The U.S. Department of Education (ED) clarified that the service based upon the greatest body of research is not the service necessarily required for a child to receive a FAPE, or that a district’s failure to prove services based on peer-reviewed research necessarily results in a denial of a FAPE. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46665 (August 14, 2006).) Further, the ED has explained that services need only be based upon peer-reviewed research to the extent possible, given the availability of peer-reviewed research. (*Ibid.*)

21. The Ninth Circuit Court of Appeals has endorsed the “snapshot” rule, explaining that the actions of a school district cannot “be judged exclusively in hindsight” but instead, “an IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) When a school district seeks to prove

that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

22. For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, it must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment, with removal from the regular education environment occurring only when the nature and severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.)

23. School districts are required by title 20 of the United States Code, section 1414(d)(1)(A)(i), to create an IEP for each child with a disability that includes: (1) a statement regarding the child's then-present levels of academic achievement and functional performance; (2) measurable annual goals, including academic and functional goals designed to meet the child's educational needs and enable the child to make progress; (3) a description of how the child's progress will be measured; (4) a statement of the special education and related or supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; (5) a statement of the program modifications or supports that will be provided; (6) an explanation of the extent to which the child will not participate with nondisabled children in the regular class; and (7) other required information, including the anticipated frequency, location, and duration of the services. (34 C.F.R. 300.320 (2006) Ed. Code, § 56345, subd. (a).)

24. Children who are eligible for special education are entitled to a FAPE that not only includes specially designed instruction to meet the child's unique needs, but related services as well. (20 U.S.C. §§ 1400(d), 1401(a)(9), (26) & (29); Ed. Code, § 56000.) "Related services" are transportation and other developmental, corrective and supportive services, such as speech therapy, that may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

Speech and Language

25. Pursuant to Factual Findings 18 through 20 and 40 through 45, the District provided Student with adequate speech and language goals and services. Based on the information the District had at the February 13, 2006 IEP meeting regarding Student's speech and language deficits, the District's goals and related services addressed Student's speech and language deficits and were reasonably calculated to permit him to make adequate educational progress.

Reading and Writing

26. Student asserted that the District's IEP did not adequately address his reading deficits because the District did not offer a specific, scientifically researched reading program, and that District proposed goals did not propose to bring Student to grade level. Pursuant to Factual Findings 14 and 47 through 50, the District's reading goals were adequate to address his unique needs. Although Student was in second grade, he was barely reading at beginner first grade level. A year's growth was adequate progress for Student based on the severity of reading deficits and his low average cognitive ability. Additionally, pursuant to Factual Finding 51, the District's IEP adequately addressed Student's language arts deficits because it contained goals to work on Student's ability to write complete sentences and the RSP service would work on this skill. The District's proposed goals and 45 minutes a day of RSP, pull out service, properly focused on teaching Student basic reading skills and strategies, such as learning sight words. (Factual Findings 53 and 54.) Finally, the District is not required to list the reading programs in the IEP.

Math, Verbal Learning, Memory and Auditory Processing Deficits

27. Pursuant to Factual Findings 52, Student did not require specific math goals and RSP service because his math skills were close to grade level and his math deficits in the area of applied problems resulted from his reading deficits, which were appropriately addressed. Regarding Student's verbal learning and memory deficits, pursuant to Factual Findings 61, Student did not establish how the District's IEP, including classroom accommodations, failed to adequately address these areas. The IEP contained goals for Student to follow two-to-three step instructions, which addressed his ADP and his verbal learning and memory deficits.

Fine and Gross Motor Skills

28. As noted in Legal Conclusion 9 above, the District failed to conduct an OT assessment to examine Student's gross and fine motor deficits. The District knew that Student had gross and fine motor deficits that negatively affected his ability to access the regular education curriculum. (Factual Findings 56 through 59.) The observations by Mr. Perkins and Ms. Poulin establish that Student needed the IEP to address his gross and fine motor deficits for him to access the curriculum. Therefore, the District's February 13, 2006 IEP denied Student a FAPE because it was not reasonably calculated to permit Student to make adequate educational progress because it did not address Student's gross and fine motor deficits.

Did the February 13, 2006 IEP Contain Measurable Goals? (Issue 1J)

29. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. § 1414(d)(1)(A)(ii); Ed.

Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

30. The February 13, 2006 IEP contained measurable goals because the District personnel could easily determine the skills that Student needed to work on and how to determine whether he performed the task and mastered the skill. Student did not establish that the District personnel did not understand the goals or how to determine whether Student met his goals. (Factual Findings 41 through 45 and 49 through 52.)

Did the February 13, 2006 Inform Parents of How the District Would Notify Them of Student's Progress? (Issue 1K)

31. The IEP shall include "a description of the manner in which the progress of the pupil toward meeting the annual goals . . . will be measured and when periodic reports on the progress the pupil is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided." (Ed. Code § 56345, subd. (a)(3).)

32. Pursuant to Factual Findings 37 and 38, the District did not check on the proposed goals the manner in which it would inform Parents of Student's progress. However, the District did state in the IEP that it would inform Parents of Student's progress at the same frequency of reporting the progress of general education students. The fact that the District did not check appropriate box did not deny Parents' procedural rights.

Did the District Have an Authorized Representative at the February 13, 2006 IEP Meeting? (Issue 1L)

33. An IEP team is required to include one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; other individuals at the discretion of the parties; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a) (2006); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

34. Pursuant to Factual Finding 36, the District had an authorized representative because the school principal, Mr. Morrison, attended the meeting and he was authorized to bind the District at the February 13, 2006 IEP meeting.

*Did the District Need Parents Consent Before Conduct the OT and APE Assessments?
(Issue 1M)*

35. Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).) Pursuant to Factual Findings 73 and 74, the District did not need to obtain Parents' consent through a formal assessment plan before Mr. Perkins and Ms. Poulin could conduct their observations. Mr. Perkins and Ms. Poulin did not conduct an assessment as they only observed Student as they would do with any student and did not administer any standardized or non-standardized tests during their observation.

Did the District Properly Respond To Parents' Request for an IEE? (Issue 1N)

36. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1) (2006); Ed. Code, § 56329, subd. (b).) An IEE is "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i) (2006).) To obtain an IEE, the student must disagree with an evaluation obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1) and (b)(2) (2006).) If the district believes its evaluation was appropriate and it does not wish to pay for an IEE, it must request a due process hearing and prove that the evaluation was appropriate. (34 C.F.R. § 300.502(b)(2) (2006).)

37. Pursuant to Factual Findings 66 and 70, Parents requested an IEE on March 26 and May 22, 2006. The District responded to the March 26, 2006 request at the April 28, 2006 IEP meeting, when the District promised to conduct its own assessment to address Parents' concern that the District's psychoeducational assessment was not comprehensive enough to determine the cause of Student's learning disabilities. The District did not explain why it did not specifically respond to Parents' March 26, 2006 IEE request or inform them that the IEE request was deficient, within a reasonable time. (Factual Findings 67, 68 and 69.) Parents did not consent to the District May 8, 2006 assessment plan, and made a second IEE request. The District did not timely respond to the May 22, 2006 IEE request due to Mr. Goldman's absence. (Factual Findings 70 and 71.) However, even though the District unduly delayed responding to and approving the IEE request, the District's actions did not deny Student any educational benefit because the IEE results would not have been received until the end of the school, and any changes to Student's IEP would not have been implemented until the beginning of the next school year. Therefore, the District's delay in responding to Parents' IEE request did not deny Student a FAPE. (Factual Finding 72.)

SY 2006-2007

Did the District provide Student speech and language services as called for by the February 13, 2006 IEP? (Issue 2A)

38. The District did not have a speech and language specialist to provide Student with therapy sessions at the start of SY 2006-2007. However, the District hired Ms. McCully soon after the District's September 14, 2006 meeting with Mother. Ms. McCully started service with Student on September 27, 2006, and made up the missed speech and language sessions. She provided Student with the therapy sessions as called for in the February 12, 2006 IEP until Parents removed Student from school. (Factual Findings 79 and 115.)

Did the October 17, 2006 IEP address Student's Unique Needs and Was Not Reasonably Calculated to Allow Him to Make Adequate Educational Progress? (Issues 2B, 2C, 2E and 2F)

Reading, Writing and Math

39. Pursuant to Factual Findings 74, 77, 78 and 83 through 86, the District's October 17, 2006 IEP properly addressed Student's reading, writing and math deficits. The District used the Waterford Reading Program, which is a scientifically researched program, and Student made adequate progress with this program and the instruction from Ms. Antu and Ms. Orlinsky. Based on Student's progress, information presented by Mother, and Dr. Schiltz's report, the District modified Student's goals, and increase Student's RSP services to an hour a day. The District added math goals and RSP time for math because Student started to have trouble as the math curriculum became harder and involved more reading. (Factual Findings 94 and 95.) The District's IEP offer met Student's needs in reading, writing and math and would allow him to made adequate educational progress.

Speech and Language and Social-Emotional

40. As the prior school year progressed, Student started having more problems with his social communication. At the October 17, 2006 IEP, the District modified the communications goals and created social-emotional goals to address this area of need. The District also added twice a month counseling sessions to address Student's anxiety. Student asserted that the District's offer did not address his speech articulation deficit because the proposed goal only worked on only "l" sounds, while Student had trouble with more sounds. However, the District needed to get Student to master this sound first before he could move to sounds that are more complex. Regarding Student's social communication and social-emotional deficits, the IEP contained new goals to teach Student to properly interact and express himself with his peers. Finally, Student was not bullied during SY 2005-2006 and the start of SY 2006-2007 and the first time the issue of bullying arose is when Mother discussed this at the September 27, 2006 IEP meeting. Therefore, pursuant to Factual Findings 88 through 93 and 96, the District's October 17, 2006 IEP properly addressed Student's speech and language and social-emotional deficits.

Auditory Processing

41. Student asserts that the District continued to fail to address his auditory processing deficits. However, Dr. Schiltz's assessment corroborated Ms. Smith's findings regarding Student's APD. Her recommendations mirrored the accommodations, goals and services that the District had provided Student in the February 13, 2006 IEP. The District did make changes to Student's goals in the October 17, 2006 IEP to fine tune the goals based on their experience working with Student to make sure that he understood the classroom instruction. Therefore, pursuant Legal Conclusion 39 and Factual Finding 98, the October 17, 2006 IEP met Student's needs regarding his APD.

42. Because the District had not assessed Student, the October 17, 2006 IEP did not contain any OT goals or services. Therefore, the District did not address his gross and fine motor deficits that prevented Student from accessing the general education curriculum. The District attempted to remedy this problem at the IEP meeting when it presented Mother with an OT assessment plan that covered both gross and fine motor deficits. Parents did not consent to this, or any other District OT assessment plan. (Factual Finding 98.) Therefore, the October 17, 2006 IEP did not provide Student with a FAPE because it did not address his OT deficits.

Did the February 9, 2007 IEP Address Student's Unique Needs and Reasonably Calculated to Allow Him to Make Adequate Educational Progress? (Issues 2B, 2C, 2E and 2F)

Reading, Writing and Math

43. Pursuant to Factual Findings 102 through 105, 109 and 110, Student made adequate progress on his reading and writing skills due to the District's prior reading and writing goals and the instruction of Ms. Orlinksy and Ms. Antu. The District's February 9, 2007 IEP reading goals and RSP services were appropriate as they built on the success of the District's prior goals and his present levels of performance. Pursuant to Factual Findings 103, 105, 109 and 110, the District's proposed math goals and offer of RSP services were sufficient to address his math deficits on applied math problem solving. Therefore, the IEP adequately addressed Student unique needs regarding reading, writing and math.

Social Emotion, Speech and Language and OT

44. Pursuant to Factual Findings 106, 107, 113 and 114, the District's proposed social-emotional goals were appropriately designed for Student to learn verbal and non-verbal social interaction skills. Additionally, Student did not establish that other students bullied him, which the District was required to address this safety concern in his IEP or that he needed an independent study program. Regarding Student's speech and language needs, the District's offer of the same goals and services as proposed in the October 17, 2006 IEP was appropriate because Student still needed to obtain the same skills based on his present levels of performance. (Factual Finding 108.) Finally, the IEP's failure to have OT goals and

services was due to Parents' refusal to consent to the District's proposed OT assessment plan. (Factual Finding 97.)

Student Need's for an OT, APD, or AT Assessment (Issue 2d)

45. Pursuant to Factual Findings 97, 98 and 99, the District did not need to conduct APD and AT assessments because the District had adequately assessed Student's APD and he did not require AT services to make adequate educational progress. However, the District needed to conduct an OT assessment due to Student's gross and fine motor deficits. The District presented Parents with an adequate OT assessment plan on October 17, 2006, and Parents never consented to the OT assessment. (Factual Finding 97.)

Did the District Permit Parents to Adequately Participate at the October 17, 2006 and February 9, 2007 IEP meetings? (Issue 2G)

46. Pursuant to Factual Findings 96 and 111 through 112, the District did not ignore Mother's input at any of the IEP meetings during SY 2006-2007. The District made changes to Student's goals in the October 17, 2006 IEP in response to concerns from Mother regarding their specificity. Additionally, the District offered an OT assessment based on Mother's request that Student needed this assessment. Mother attended the February 9, 2007 IEP meeting, but did not participate in the discussions because she already decided that she wanted an independent study program for Student. Mother would not have accepted any other educational program for Student because she believed that he was bullied at school. Therefore, the evidence established that the District did not prohibit Parents' meaningful participation in Student's IEP meetings.

Did the District Have All Needed Team Members at the October 17, 2006 and February 9, 2007 IEP meetings? (Issue 2H)

47. At the October 17, 2006 IEP meeting, the District did not have a general education teacher in attendance because Ms. Orlinsky was out due to a family emergency, which was a violation of Parents' procedural rights. However, her absence did not prevent Mother from meaningfully participating at the IEP meeting or cause a deprivation of educational benefits for Student because Ms. Orlinsky and Ms. Tribble presented at the September 27, 2006 IEP meeting their observations of Student's progress and deficits in class and his progress on his goals. Mother did not testify that she needed Ms. Orlinsky's presence at the October 17, 2006 IEP meeting to adequately participate or that Ms. Orlinsky's presence would have changed the District's IEP offer, which was adequate to meet Student's unique needs. (*L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2009) ___ F.3d. ___, ___, 2009 WL 349795, *8.) (Factual Findings 80 and 81.) Regarding Ms. McCully, she left the October 17, 2006 IEP meeting early after she reported Student's present levels of performance and her proposed goals. Student did not establish that her presence was needed for the remainder of the IEP meeting. (Factual Finding 82.)

48. Regarding the February 9, 2007 IEP meeting, the District did not need to have Ms. Poulin because her presence was not needed at the IEP meeting because she had no information to present. (Factual Finding 101.) Ms. McCully did not attend the IEP meeting before Mother left because the IEP team had not begun to discuss the District's proposed communication goals and Student's progress on the previous goals. Additionally, Student did not introduce any evidence that Mother required Ms. McCully's presence before Mother decided to unilaterally leave the IEP meeting. (Factual Findings 101 and 108.) Therefore, the District had the required team members at the February 9, 2007 IEP meeting.

Did the District fail to Provide Parents with Student's Complete Speech and Language Provider Logs? (Issue 2I)

49. Student contends that the District did not provide Parents with a copy of his speech and language logs after Parents' request. However, Parents had originals of some of Ms. McCully's logs and copies of other portions. (Factual Finding 116.) Therefore, the District provided Parents with Student's speech and language logs and did not violate Parents' procedural rights.

Did the District Fail to Provide Parents with Prior Written Notice? (Issues 3A, 3B and 3C)

50. Prior written notice must be given to the parents of a child with a disability a reasonable time before a public agency proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of a FAPE to the child. (14 U.S.C. § 1415 (b)(3); 34 C.F.R. § 300.503(a) (2006).) A public agency that is responsible for making a FAPE available to a child with a disability must obtain informed consent from the parent before conducting an initial evaluation and before the initial provision of special education and related services to the child. (34 C.F.R. §§ 300.300(a)(ii) & (iii); 300.300(b)(3) (2006) & 300.505(a) (2006); Ed Code, § 56321.)

51. The only IEE that Parents continued to request was an APD assessment. The District did not provide Parents with prior written notice that it was not going to grant Parents' request. However, Parents knew from the September 27 and October 17, 2006 IEP meetings that the District was not going to grant Parents' request. The District's conduct did not deny Student an educational benefit because the District had granted Parents' IEE request with Dr. Schiltz's IEE, which assessed Student's auditory processing deficit. Therefore, the District's failure to provide prior written notice did not deny Student's procedural rights. (Factual Findings 25 and 98.)

52. Pursuant to Factual Findings 79 and 115, the District failed to provide Parents with prior written notice of its failure to provide Student with speech and language services at the start of SY 2006-2007 because it had not hired a replacement for Ms. Correia. However, the District's failure to provide prior written notice did not deny Student an educational benefit or significantly impede Parent's ability to participate in Student's education decision-

making process because the District hired a speech and language specialist, who made up the missed sessions, soon after Mother raised this issue with the District on September 14, 2006.

53. The District needed to provide Parents with prior written notice regarding its failure to conduct an OT assessment when it decided to conduct instead an OT observation at the February 13, 2006 IEP meeting. Additionally, the District did not provide prior written notice regarding the May 8, 2006 assessment plan's failure to assess Student's fine motor skills because the assessment only addressed Student's gross motor skills. (Factual Findings 59, 69 and 97.) Therefore, the District violated Parents' procedural rights regarding the OT assessment, which denied Student an educational benefit because he required an assessment of gross and fine motor skills. Finally, Parents did not request an AT assessment.

Remedies

54. Compensatory education is an equitable remedy; it is not a contractual remedy. (*Parents of Student W v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.) The law does not require that day-for-day compensation be awarded for time missed. (*Ibid.*) Relief should be designed to ensure that the student is appropriately educated within the meaning of the law. (*Ibid.*) An award to compensate for past violations must rely on an individualized analysis, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

55. The District's failure to conduct an OT assessment as part of Student's initial assessment through the October 17, 2006 IEP meeting, led to the District failing to provide Student with OT services to address his fine and gross motor deficits. Awarding an IEE would not be appropriate because CAVA conducted an OT assessment right after he enrolled. (*Los Angeles Unified Sch. Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-823.) The District's failure to assess and address Student gross and fine motor deficits warrants compensatory education as a remedy. Based on the gross and fine motor deficits that Ms. Poulin and Mr. Perkins observed, the amount of OT services that CAVA presently provides, one individual 30 minute a week session, would have been an appropriate level of services to address Student's needs if the District timely assessed Student. Because Student did not receive needed OT services for a year, Student is entitled to 36, 30 minute, one-to-one OT sessions, designed to address his gross and fine motor deficits, to provide Student with the educational benefits he would have received if the District provided him with OT services. (Factual Findings 56, 57, 58, 117 and 118.)

56. Regarding the District's failure to timely respond to Parents' IEE requests, the District provided the neuropsychological assessment that they requested. Since Student did not require an APD or AT assessments (Legal Conclusions 10, 11, 37 and 45), it is not appropriate to order the District to provide Student with any further IEE. However, the

District needs to take steps to ensure that it appropriately and timely responds to requests for IEEs.

57. Finally, regarding the District's failure to provide prior written notice of the District's failure to provide Student with speech and language sessions, the District needs to ensure that it informs parents when it cannot provide a related service for an extended period of time because it does not have a service provider. (Legal Conclusions 38 and 52.)

ORDER

1. By December 31, 2009, the District shall provide Student with 36 occupational therapy sessions, 30 minutes a session, focused on Student's OT goals in his current IEP with CAVA. The District shall contract with Student's current provider to provide the OT services. If the District cannot contract with Student's present OT provider, the District may provide the OT service through another non-public agency.

2. Within 60 days of this Decision, the District shall provide a two-hour training to its personnel who draft assessment plans on ensuring that the District assesses students in all areas of suspected disability during the initial eligibility assessment and that initial eligibility assessments are completed in timely fashion.

3. Within 60 days of this Decision, the District shall develop a written protocol to ensure that correspondence sent to District special education providers and administrators who are on extended absences or leave is answered in a timely manner according to applicable federal and California special education laws.

PREVAILING PARTY

Pursuant to California 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. Here, Student prevailed Issues 1A, 1B, 1I, 1N, the portion of 2E regarding OT services, 3A, 3B and the portion of 3C regarding the OT assessment, and the District prevailed on all other issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: February 23, 2009

/s/

PETER-PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

