

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT,

OAH Case No. 2012100242

FRESNO UNIFIED SCHOOL DISTRICT,

OAH Case No. 2012100291

v.

STUDENT.

CORRECTED DECISION¹

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on October 3, 2012, naming Fresno Unified School District.

Fresno filed a due process hearing request with OAH on October 5, 2012, naming Student.

OAH consolidated the cases on October 30, 2012, and determined that the timelines in Student's case governed the consolidated matter. The consolidated matter was continued for good cause on November 19, 2012.

Administrative Law Judge Margaret M. Broussard heard this matter in Fresno, California, on September 11, 12, 17, 18, 19, October 8, 28, 29, 30, 31, and November 1, 5, 6, and 7, 2013.

¹ This Corrected Decision is issued to correct inadvertent typographical errors. The last sentence in paragraph 4 of the Order is revised to refer to paragraph 5. A few minor grammatical errors have been corrected and the spelling of EvoLibri has been corrected throughout.

On December 2, 2013, closing arguments were received and the matter was submitted. On December 4, 2013, OAH issued an order bifurcating the liability portion of the matters from the remedy portion.

On January 23, 2014, a final decision was issued on the liability portion of the consolidated matters, finding that Fresno denied Student a free appropriate public education (liability decision). As a part of that decision, an independent psycho-educational assessment and an independent transition assessment were ordered to be completed at OAH's expense, to provide information necessary to determine the compensatory education award for Student.

The remedies hearing was continued during the pendency of the assessments and then because of a medical issue on the part of counsel for Fresno.

The remedies hearing was held on August 14 and 15, 2014. On the last day of hearing, the parties were granted a continuance to file written closing arguments by the close of business on September 2, 2014. After the timely receipt of the written closing arguments, the matter was submitted².

Tania Whiteleather, Attorney at Law, represented Student at the remedies hearing. Mother is Student's educational rights holder. Mother was present at all times during the hearing. Student was not present at the hearing.

Sang-Jin Nam, Attorney at Law, and Diandra Netto, Attorney at Law, represented Fresno at the remedies hearing. Debi Clark-Fleming, District representative, was present on all hearing dates.

SUMMARY OF LIABILITY DECISION

Fresno generally contended that it should have been allowed to assess Student pursuant to an assessment plan dated October 25, 2011, and sought to discontinue Student's placement in her regional occupational program class at Duncan High School. Further, Fresno argued that its October 25, 2011 individualized education program and September 26, 2012 prior written notice, offered Student FAPE in the least restrictive environment and that Fresno should be excused from providing FAPE to Student from August 2012 forward because Student did not present herself for the assessment ordered in OAH Case No. 2012010705.

² On August 29, 2014, Student submitted a request for OAH to take official notice of two orders issued by the United States District Court, Eastern District of California, which Fresno opposed. The orders issued by the District Court did not affect the analysis of the issues in this decision, and, as such, no official notice was taken.

Because Student turned 22 years old on December 20, 2013, and aged out of special education on December 31, 2013, the liability decision did not reach the merits of Fresno's first two issues as Fresno was no longer required or allowed to serve Student when the decision was issued on January 23, 2014. Fresno did not meet its burden to show that the October 25, 2011 IEP offered Student a FAPE because of both procedural and substantive deficiencies in the IEP. Fresno did not establish that the "offer" of placement in the September 26, 2012 prior written notice offered Student a FAPE because it was not an IEP placement offer and, even if it was an offer, it was predetermined. Finally, Fresno was not excused from offering or providing Student a FAPE after August 2012 because the Decision in OAH Case No. 2012010705 did not expressly absolve Fresno of responsibility to provide Student FAPE if the assessment was not completed and because the Decision in that case was on appeal, and, therefore, not final.

Student contended that Fresno denied her a FAPE in the 2010-2011 school year from October 3, 2010, and in the 2011-2012 and the 2012-2013 school years. Student met her burden to show that Fresno denied her a FAPE from October 3, 2010, through the end of the 2010-2011 school year, including the 2011 extended school year. Student also met her burden to show that Fresno denied her a FAPE in the 2011-2012 school year until October 25, 2011. As detailed below, Fresno did not offer Student a FAPE in the October 25, 2011 IEP, and OAH decision in Case No. 2012010705 found that the December 12, 2011 IEP denied Student a FAPE, which was not appealed. Because Fresno did not hold any more IEP team meetings, Fresno denied Student a FAPE from October 25, 2011, forward; so it was unnecessary to reach the specific contentions of Student in regards to allegations of a denial of FAPE after October 25, 2011.

Fresno denied Student a FAPE in the areas of reading, reading comprehension, writing, mathematics, functional and independent living skills, communication, self-advocacy, and, in the area of transition planning which includes vocational skills and preparation. The combined denial of FAPE for Student resulted in a deprivation of services, which was pervasive and impactful.

In sum, Fresno denied Student a FAPE from October 3, 2010, until the end of Student's eligibility period, December 31, 2014. This includes the extended school years from 2011, 2012 and 2013.

SUMMARY OF REMEDIES DECISION

Fresno denied Student a FAPE for 39 months, ending when Student aged out of special education on December 31, 2013. Student had needs in the areas of reading, reading comprehension, writing, mathematics, functional and independent living skills and in the area of transition, which includes vocational skills and preparation, that Fresno failed to meet.

This decision adopts the recommendations of the independent assessors hired to provide assessments and recommendations, as clarified and modified below. Student will receive compensatory education in the areas of reading, reading comprehension, writing, mathematics, functional and independent living skills, vocational skills and preparation.

The assessors were independent and thoroughly assessed Student. Their recommendations are individually tailored to Student's unique needs. The recommendations, when taken together, provide a clear plan for Student to put her in the position she would have been if Fresno had provided her with a FAPE.

The recommendation to provide compensatory services for 55 months compensates Student and places her where she should have been had Fresno not denied her a FAPE. This decision adopts the recommendation because it is a reasonable estimate and because Fresno did not put on any conflicting evidence of any alternate period. Further, Fresno's lead school psychologist agreed that Student likely lost some of the information she had previously learned and that she will need to be re-taught information after breaks and will take longer than average to re-learn information.

Fresno's proposals for compensatory education lacked any duration identified to make up for the denial of FAPE; were not tailored specifically for Student's unique needs; did not have any coordination proposed between the academic portion and the adult transition program offered; offered no interaction with same age peers, were not appropriate for Student's age and demonstrated skill levels; offered a limited curriculum for reading instruction; did not address Student's need for functional math instruction (numeracy); and offered insufficient individualized transition services to Student in a "cookie-cutter" model. Further, the adult transition program recommended does not offer any extended year services and Fresno did not offer any services during the summer months for Student, even though the evidence shows that she is in need of services in the summer months.

FACTUAL FINDINGS

Background and Jurisdiction

1. All of the factual findings in the liability decision are incorporated into this decision.
2. Student is a 22-year-old woman who currently resides with Mother within the geographical boundaries of District, and turned 22 years old on December 20, 2013. Student was eligible for special education under the primary category of intellectual disability.³

³ Intellectual Disability was formerly referred to as mental retardation and the evidence in this matter uses both terms. In this Decision, the condition will be referred to as intellectual disability.

Student has been eligible for special education since she was in preschool and remained eligible through December 31, 2013. Mother is Student's conservator, and holds her educational rights.

3. Following the liability decision, OAH contracted with Dr. Howard Glidden, and Jan Johnston-Tyler from EvoLibri to conduct the independent assessments. The purpose of these assessments was to inform the ALJ and the parties regarding Student's needs and to make recommendations for compensatory education for Student. This was necessary because Fresno had not performed a complete triennial assessment of Student since 2002 and had never completed a transition assessment for her.

4. Student presented herself and participated fully in the assessments. The assessments were sent to OAH, and then promptly forwarded to counsel for Student and Fresno on March 28, 2014, and April 9, 2014.

Dr. Glidden's Psycho-educational Assessment and Recommendations

5. Dr. Glidden has a bachelor's degree, master's degree, and Ph.D. in psychology. He has been in practice assessing people since 1980, in private practice since 1997, and has conducted thousands of psycho-educational assessments of individuals of various ages.

6. Dr. Glidden's 54-page assessment report of Student was comprehensive. He reviewed hundreds of pages of educational records, interviewed Student and Parent, and administered standardized tests to Student. Dr. Glidden has extensive experience assessing both children and adults. His testimony was clear, informative and consistent on cross-examination. He was also retained in this matter as an independent assessor and, as such, had no interest in the outcome of the assessment. He was credible and his testimony and report are given great weight.

7. This decision incorporates and adopts the findings and recommendations in Dr. Glidden's report. His report has detailed descriptions of Student's unique strengths and weaknesses and her ability to learn both academic and functional skills.

8. Student's longstanding seizure disorder has contributed to her impairments. Dr. Glidden concluded that there is no evidence that Student has experienced a recent diminution of cognitive skills and abilities over time, but rather her challenges appear to be of a longstanding nature. He diagnosed Student with Major Neuro-cognitive Disorder Due to Multiple Etiologies, and Specific Learning Disabilities with impairments in reading, written expression and mathematics.

9. Student is an individual with complex neurocognitive deficits that include generalized cognitive slowing, impaired visual-spatial perception, limited phonologic processing, limited sequential tracking, limited graphomotor integration abilities, difficulty following complex instructions, limited receptive and expressive language functioning,

limited verbal and nonverbal spontaneity and global academic delay. She also exhibits a significant problem retaining previously learned information because the learning of new, similar information impacts her ability to retain previously acquired information. This, in addition to challenges with novel learning, also impacts her ability to learn and perform activities of daily living. Student's impairments are complex and the testing revealed information regarding her learning, which are longstanding in nature, which Fresno failed to uncover or accommodate because of its lack of assessment.

10. Student's trajectory of development is in the appropriate sequence, but delayed. Student is most comfortable processing information that is rehearsed and associative than she is in processing more complex information. Importantly, Dr. Glidden concluded that: "[Student] presents as a hardworking, industrious individual who will certainly take advantage of all opportunities for mastery of strategies to enhance her learning potential. It will, as such, be important to continue to provide her with strategies to improve [sic] overall level of functioning."

11. Dr. Glidden found that Student does not meet the diagnostic criteria for intellectual disability because she does not evidence a global developmental delay. In some areas Student functions like a student with an intellectual disability and in other areas, she functions at a higher level. Student scored in the low average and the average range on some of the tests administered. Her overall intellectual ability is 67, which is in the extremely low range. However, a score of 70 is in the borderline range, so Student's overall ability is at the "top" of the extremely low range.

12. As part of Dr. Glidden's assessment, he assessed Student's adaptive functioning skills. Adaptive functioning refers to the individual's ability to conduct usual and customary activities predicted for age. One of the measures was completed by Mother and yielded a score in the below average range, which is significantly superior to that which would be predicted from the intellectual testing completed. When asked about this, Dr. Glidden credibly explained that there could be several reasons for this, including Mother overestimating Student's functioning because Mother only asks Student to do what Mother knows she has mastered at home, or because Student has had years to learn skills in the home and she has mastered them. On another performance-based measure of daily living that looked at different, specific skills, Student scored in the moderately to severely impaired range.

13. As Student turned 22 before Dr. Glidden undertook the assessment, past the eligibility age for special education, it was not necessary for him to determine her eligibility for special education under any category. Despite not assessing Student since she was in fourth grade, Fresno, through lead school psychologist, Mr. Deeder Gill, attempted to discredit Dr. Glidden's diagnosis and his interpretation of Student's adaptive skill inventory. Mr. Gill claimed that Student has an intellectual disability and disputed the presence of specific learning disabilities in Student, not because he disagreed with the methods or results of the testing, but with Dr. Glidden's interpretation of the assessment results. Mr. Gill admitted that his credential does not allow him to diagnose and that he is not able to assess

any person over the age of special education eligibility, like Student. Therefore, Mr. Gill's testimony on these issues are given no weight.

14. In both the liability and remedies hearings, and in its closing argument, Fresno contends that Student has an intellectual disability and that she has a very limited learning potential, which she has reached. However, the evidence shows that Student can learn, but that her unique needs require a specific plan for both instruction and teaching her to retain information, neither of which Fresno has ever attempted. Student's needs are complex and she needs specific learning strategies employed which, the testimony in the liability portion of the case revealed, Fresno never utilized with Student.

15. Fresno contends that because Student has not made academic progress in the past 12 years, she has reached a plateau and therefore, lacks the capacity to acquire new academic skills. Fresno goes on to argue that any compensatory award should be reduced because of this plateau. This argument is not supported by the evidence. First, Fresno admits that Student has not made academic progress in over 12 years. Fresno's attempt to characterize this as showing that Student does not have the ability to learn contradicts the evidence in this case and fails to take into account Fresno's failure to provide Student a FAPE from October 3, 2010, forward. Further, in OAH Case 2008120492, Fresno's September 2008 IEP did not provide Student a FAPE. Therefore, for at least a portion of the 2008-2009 school year and from October 3, 2010, forward, Fresno's IEP's did not meet even the minimum standard necessary to confer educational benefit to Student. Since Fresno did not assess Student between fourth grade through the end of her special education eligibility at age 22, nor understand or accommodate her complex learning needs, it is not surprising that she did not make academic progress. Fresno's argument is not persuasive because Student's failure to make educational progress is the result of Fresno's failure to provide a FAPE.

16. Even if Fresno had shown that Student was a student with intellectual disability, she would be on the very high end of that spectrum. Fresno's implication that Student should be diagnosed with intellectual disability because that classification would result in lowered expectations for her learning and a lower award of compensatory education is formulaic and against the individualized requirements of the IDEA. The compensatory education award for Student is not based upon a diagnosis, classification, or single test or measure. Dr. Glidden's report takes into account the many facets of Student's unique needs and her strengths and weaknesses. Fresno's witnesses contended during the liability hearing that Student was not capable of making academic progress, as she had reached a plateau. The evidence fails to support this conclusion. In fact, the evidence showed that Student can learn and become a productive member of society. However to do so, those who undertake her instruction must be armed with information regarding Student and her learning needs, which Fresno did not have due to its failure to assess Student since 2002.

EvoLibri's Transition Assessment and Recommendations

17. Jan Johnston-Tyler, of EvoLibri, assessed Student. EvoLibri provides assessment, counseling, and coaching in the area of transition for special education and other

students. Ms. Johnston-Tyler has a master's of arts in counseling with a career emphasis. Ms. Johnston-Tyler has extensive experience in vocational training and planning for students with disabilities. She has provided services to both private clients and school districts.

18. Ms. Johnston-Tyler met with Student and Mother extensively, and prepared a well-organized, informative report. She considered Dr. Glidden's report in her report when proposing the compensatory services for Student. Her testimony was clear, insightful, practical, knowledgeable and without hesitation. Her report and testimony are given great weight.

19. This decision incorporates and adopts the findings, goals, and recommendations in EvoLibri's report. It has detailed descriptions of Student's unique needs, suggested goals and recommendations. The assessment took into account Student's specific skills, desires and unique needs. It is a comprehensive report that gives valuable information regarding Student's transition needs. Finally, Ms. Johnston-Tyler is an independent assessor that was not retained by either party in this matter.

20. The EvoLibri assessment consisted of a review of documents and school records, Dr. Glidden's report, and functional assessments filled out by Mother and Student, and an interview with Mother by phone, and in-person interview with Mother and Student. The purpose of the report was to identify Student's relative level of functioning with regards to transition to adulthood and independent living, her relative level of functioning with regards to employability, areas of vocational interest and to make recommendations for compensatory services for Student to compensate for Fresno's denial of FAPE between October 3, 2010, and December 31, 2013.

21. Ms Johnston-Tyler assessed Student in the areas of social, emotional, self-advocacy, learning/attentional/mobility, general living skills, self-care, finances and self-determination. The report details examples of Student's present levels of performance in each area, noting things she can and cannot currently do. The report discusses Student's interest in obtaining employment in the following areas: floral, horticulture, forestry, science and art. Working in the floral industry is a vocational interest that should be considered as the top choice for future employment exploration and placement as it seems to be a reasonable goal for Student at this time based upon both independent assessments presented at hearing.

22. The EvoLibri report contains recommendations for Student, which are adopted as part of this decision. The details of the recommendations, as well as goals and measurements for the goals, are specifically listed in the report. Generally, Student needs reading and writing instruction, math, numeracy, and financial literacy instruction to prepare her to live and work as independently as possible. Student also needs job shadowing, supported or semi-supported employment, and job coaching. Finally, she needs instruction in personal safety, executive functioning, mobility, money handling, fine motor remediation for keyboarding skills, cooking, self-advocacy, and social skills.

23. Finally, Ms. Johnston-Tyler's assessment has detailed, individualized and reasonable recommendations for an individualized, comprehensive, integrated, meaningful plan for compensatory education for Student, designed specifically to put her in the place she would have been had she not been denied a FAPE for the 39 months, as determined in the liability decision.

24. As to the duration for Student's compensatory education, Ms. Johnston-Tyler recommended a duration of about 1.5 times the duration of the missed services. Ms. Johnston-Tyler based her recommendation after working with Student and other students in the area of transition. She considered Student's assessed deficiencies in retaining information when not exposed to it regularly. Further, she considered the amount of time Student has been without services and her anxiety, among other factors. She freely admitted in her report and in her testimony that there were no studies to give her guidance as to a recommended duration of services. Thus, she used the information she had gathered about Student, her own experience and determined that a multiplier of 1.5 months for every month Student lost was reasonable.

25. Although Fresno had the independent reports for several months before the remedies hearing, Fresno put on no evidence regarding the appropriate duration and amount of compensatory services. Ms. Kathryn Wage and Ms. Julia Smith, Fresno's witnesses regarding compensatory education proposals, were not aware that Fresno had denied Student a FAPE and neither proposed any amount of services designed to compensate Student for the denial of FAPE. Ms. Wage testified that she was recommending two years of reading and math instruction, but did not testify that this would compensate Student for Fresno's denial of FAPE. Mr. Gill, Fresno's lead school psychologist, specifically stated that he was not at the hearing to testify as to an amount of compensatory education for Student.

26. When questioned, Mr. Gill admitted that he would expect that Student would take longer to recoup knowledge when she has been without education. By the time Student's compensatory education starts on October 1, 2014, Student will have been denied a FAPE from October 3, 2010, through December 31, 2013 and without any services from December 31, 2013, through October 1, 2014. While Student is not entitled to compensatory education for the period from December 31, 2013, through October 1, 2014, the additional delay of nine months impacts Student's ability to recoup information and learn. This was considered, along with all of the other evidence, when ordering the 55 months of compensatory education.

27. Student, given the appropriate compensatory remediated education in academics, vocational skills and independent living skills, will be prepared for integrated employment, which is where Student would have been at age 22, had Fresno appropriately served her from October 3, 2010 through December 31, 2013.

Required Components of Student's Compensatory Education

28. Based on the conclusions from the liability decision and the independent assessments, Student is entitled to compensatory services in the areas of reading, reading comprehension, writing, mathematics, functional and independent living skills, vocational skills and preparation. The EvoLibri proposal for compensatory education, as repeated and modified below in the Order, appropriately compensates Student in these areas.

29. Student requires one-to-one instruction for academics and vocational skills. Based on Dr. Glidden's report, Student's needs were complex and longstanding and she required one-to-one instruction during the relevant periods for which there was a denial of FAPE.

30. Student needs intensive reading instruction in both phonics and sight word reading and a peer-reviewed, researched-based program should be utilized. Because Fresno did not use such a program for Student during the times at issue in the liability decision, it is unclear which program may benefit Student. Student needs to try a program for a period of approximately three months, and, if data shows improvement, the program may be continued. If Student does not show improvement, an alternate program should be tried. Student's writing program should concentrate on increasing the writing skills she will need to hold a job and live independently.

31. Student needs a math program that focuses on functional math and numeracy. Student does not need continued work on simple adding and subtracting with carrying and borrowing, without providing a meaningful and useful context to the learning. Student needs to be taught how to read bills in order to make sure the charges and payments are correctly applied. She needs to understand banking, purchases, determining change in cash transactions, recipes and other practical applications of math.

32. Because of Student's complex, longstanding academic needs, she requires either a special education teacher or other person with several years' experience teaching reading, writing, and math. This person needs to be flexible and be able to try different approaches and follow Dr. Glidden's recommendations.

33. Ms. Johnston-Tyler testified that Student should receive her independent living skills instruction in a group setting, if an appropriate group setting is available. There was no testimony as to an appropriate group setting currently available for Student. However, Student can benefit from individual independent living skills instruction and is entitled to compensatory education in this area. Further, her independent living instruction could be transitioned into a group setting if an appropriate one is found in the Fresno area.

34. Student's need for executive functioning training, independent living skills, social skills and vocational skills are addressed and included in the Order below. These are critical skills for Student and are appropriately addressed through the program as defined below.

35. The program proposed by EvoLibri is comprehensive. It integrates the required components of Student's compensatory education into a program that will grow and change with Student as she gains skills over time. It was developed specifically for Student, taking into account her unique strengths, weaknesses, needs and personal goals. EvoLibri can administer the compensatory education program for Student and, based on the evidence submitted at trial, is in the best position to do so. EvoLibri provided the following breakdown of its costs:

Case Management/Administration: \$150.00 per hour.

Job Retention: \$125.00 per hour.

Independent Living Skills Instruction : \$1,200 per diem. (One time per week, months 1-6)

Independent Living Skills Instruction/Vocational Development: \$1,200.00 per diem. (One time per week, months 7-12)

36. EvoLibri also estimated that the cost for the academic/executive functioning and ILS practice instructor(s) would be \$70.00 per hour and the cost for a job coach would be \$35.00 per hour. Fresno provided no evidence that any of the costs charged by or anticipated by EvoLibri were not reasonable or within the current market rate for the Fresno area. These amounts are found to be reasonable.

Fresno's Compensatory Proposals

37. Fresno called three witnesses in the remedies portion of the hearing. Ms. Wage is a speech therapist with a background in the school system, including at the California Diagnostic Center. She co-owns a clinic in the Fresno area that provides speech therapy, occupational therapy and tutoring. She is not a credentialed teacher and employs no credentialed teachers as part of her program. She has never met Student or assessed Student. The only adults she has worked with who were over age 21 had high school diplomas and had hired her to address educational weaknesses to prepare for college coursework. There was no evidence that she has done any work with functional reading, writing and math skills for adults.

38. Ms. Wage testified that she had read both of the independent assessments. Although she testified that she had experience with other students with a similar profile to Student, when asked specifically about students over the age of 21, she only gave examples of students who had earned high school diplomas and did not have needs similar to Student. Ms. Wage did not demonstrate that she had any experience with students similar to Student in Student's age range.

39. Ms. Wage gave no testimony about how she would implement a functional math or numeracy program for Student. She uses two programs at her center for math, but neither were described as meeting Student's needs. The center only uses two programs for reading, Fast ForWord and Barton. She testified that these were purchased because they were compatible with how they run their center. For writing, she testified that the

occupational therapist uses Handwriting Without Tears, but no evidence that this would help Student's substantive writing deficiencies, as this only works on the mechanics of handwriting. The clinic uses college students to instruct clients in reading and math and only trains them in the few programs that the center uses. There was no evidence any of the limited programs offered would work for Student and no plan if they did not. Although she recommended two years of services, it was not a compensatory proposal, because she knew nothing of the compensatory nature of the proposed services. Most alarmingly, Ms. Wage testified that she would not follow all of Dr. Glidden's recommendations, but that she, a speech therapist without experience teaching reading, math and writing, would decide which recommendations to follow. Therefore, Ms. Wage's testimony and opinions are given little weight.

40. Fresno also proposed to enroll Student at the ATP on Fairview⁴ program for compensatory education. This program has had a name change and was previously referred to as the ATP at Instructional Media Center in the liability decision. However, Fresno never explained how the two programs, Ms. Wage's and ATP on Fairview, should be integrated and whether the two programs would even communicate with each other.

41. Ms. Smith, the director of the ATP on Fairview, had not read any of the reports prior to the hearing. Her only information regarding Student was in one "old" IEP she had read. During her testimony, she was directed to one page in the EvoLibri report and that was the only part of the report she had ever seen. She had not been given a copy of the EvoLibri report or Dr. Glidden's report prior to her testimony where she testified that Student's needs could be served in the ATP on Fairview. After not assessing Student for 12 years, Fresno proposed a program and had a person testify that the program was appropriate without even asking her to read the independent assessment reports so that she would be able to render an informed opinion as to whether the program could serve Student's needs. Therefore, Ms. Smith's opinion as to whether Student could be served in the ATP is accordingly given no weight.

42. The ATP on Fairview program is for students up to the end of the semester in which they turn 22. By the time this decision is issued, Student will be almost 23. By the time she completes the compensatory education program ordered below, she will be 27 years old. The students in the ATP program would not be Student's peers, as she would be almost 10 years older than some of them by the time she completes her compensatory services.

43. Ms. Smith first stated that there were other students in the program that were over 22. However, on further questioning, she admitted that the program had never served any Student past the age of special education eligibility and that a "court" had ordered that a

⁴ The ATP on Fairview program was previously referred to as the ATP at IMC and is one of the adult transition programs that Fresno provides for students 18-22 who are eligible for special education and have not received a regular high school diploma.

student over 22 could return to the program. That Student is now 23, but has never enrolled or attended past the age of eligibility.

44. The ATP on Fairview program is not individually designed for Student. All of the students have the same schedule. The schedule includes very few academics, independent living skills that evidence showed Student has already mastered, and very limited work experience. From year to year, the schedule does not change with the exception after the first year of the addition of an additional hour to an hour-and-a-half per week of work.

45. In the ATP on Fairview program, regardless of whether a student needs instruction in specific areas, the student must participate with the entire class, even if the skill is already mastered. While there is some leeway to join another classroom for a short time to work on something else, it would still have to be what that whole class is working on. For instance, the entire program uses a curriculum called “5 is a crime,” to teach students what behaviors will get them in trouble with the police. A lot of time is spent the first year teaching students this curriculum and time is spent each additional year reviewing it. This has no relationship to any identified need Student has, as her behaviors have never been a concern. When asked, Ms. Smith indicated that all students participate, regardless of need. Furthermore, many of the skills Ms. Smith highlighted as being taught at the ATP on Fairview, Student has mastered.

46. The vocational program at ATP on Fairview is far too restrictive for Student and does not provide individualized compensatory services specific to Student’s needs. The work offered is not appropriate for Student, there are not enough hours offered and it is not in a career path reasonable for Student. The vocational work opportunities are in a group and one work site is assigned to each class of about 12 students. The group of students with disabilities all go together to one job site. The job sites are determined by the contracts entered into for the group from the ATP program. Although there is some ability for a student to attend the work program with one of the other five classes, there is no individual assignment of appropriate work sites based on student interest and aptitude. Ms. Smith gave one example of a student who wanted to work in a particular field and noted that the program did nothing to help that student explore whether that field was suitable but instead assigned the student to one of the predetermined work sites.

47. Once on the work site, the students stay in a group and are given mostly janitorial and stocking responsibilities. While sometimes store management may interact with the students, the teacher and aide are often supervising the work of the students. The first year in the program, students only work on Monday and Wednesday mornings for about an hour and one half each day. The later years in the program, students add an additional hour and-one-half on Tuesdays. There was no evidence that the job site management provides any performance reviews, pay, or other benefit to the students. The ATP program does not offer any services in the summer months. This does not meet Student’s needs. Student needs continuous instruction and should not have several months of interruption to her compensatory program.

48. Student's level of functioning is well above working in a group doing janitorial and stocking work a few hours a week. The level of support, job experiences and instruction Student needs to prepare her for independent life is not present in the ATP work programs. Student is also entitled to job experiences that prepare her to work in a field of her choice. There is no choice and individualization of job experiences in the ATP program. While the ATP program may provide some sort of vocational training for some students with moderate to severe disabilities, it is not an appropriate vocational skills program for Student. Student will likely be capable, with proper training and counseling, of obtaining a job in an area in which she has interest and working at least 25 hours a week. Student has expressed interest in working at a floral shop or nursery or working with animals. There was no evidence that the vocational program at the ATP would prepare Student for such employment. Student should have had vocational skills training and experience as part of her transition program in special education that would have prepared her to obtain a job in her area of interest working at least 25 hours a week at the end of her special education eligibility period. Therefore, a compensatory vocational program for Student is necessary.

49. Despite almost eight months to prepare for the remedies portion of the hearing and more than four months after receiving the proposed compensatory education proposal from EvoLibri, Fresno failed to propose a comprehensive compensatory program for Student. Fresno proposed a private tutoring program for academics and enrollment in its adult transition program, a full day program, with no evidence as to how to integrate the programs and with no case management in place to ensure that Student's academics and the rest of her program were integrated⁵. Fresno's proposed services do not meet Student's needs for compensatory education.

Student's Desires for Compensatory Education

50. Mother persuasively testified that Student would like to participate in further educational and vocational opportunities. Mother also testified that Student would not want to be in a program with only other students with disabilities. However, the evidence showed that Student can benefit from an appropriate independent living skills program taught in a group setting, if one with same-age peers at a similar functional level is available. Typically developing adults would not be enrolled in an independent living skills program, and there was evidence that Student could benefit from being with higher functioning, 20-something adults with disabilities, learning independent living skills.

⁵ Although Fresno suggested in its closing argument that a teacher employed by Fresno could provide some individual instruction to Student to supplement the ATP program, no evidence of this was offered at hearing.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁶ et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of children with disabilities and their parent are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].)

3. When a school district denies a child with a disability a FAPE, the student is entitled to relief that is " "appropriate"" in light of the purposes of the IDEA. (*School Comm. of the Town of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 374, [105 S. Ct. 1996, 85 L.Ed.2d 385](*Burlington*); 20 U.S.C. § 1415.) Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief that may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. (*See Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) The purpose of compensatory education is to " "ensure that the student is appropriately educated within the meaning of the IDEA."" (*Id.*)

4. Compensatory education is an equitable remedy and must rely on a fact-specific and individualized assessment of a student's current needs. (*Puyallup, supra*, 31 F.3d at p. 1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524 (*Reid*); *Shaun M. v. Hamamoto* (D. Hawai'i, Oct. 22, 2009 (Civ. No. 09-00075)) 2009 WL 3415308, pp. 8-9 [current needs]; *B.T. v. Department of Educ.* (D. Hawai'i 2009) 676 F.Supp.2d 982, 989-990 [same].)

5. The compensatory education 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." (*Reid supra*, 401 F.3d at p. 524.) In determining the equitable remedy, the ALJ may consider the school district's failure to

⁶ All subsequent references to the Code of Federal Regulations are to the 2006 version.

update an outdated IEP and refusal to cooperate. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1059-1060; *T.B. ex rel. Brenneise v. San Diego Unified School Dist.* (S.D.Cal, March 30, 2011, No. 08CV28–MMA (WMc)) 2011 WL 1212711, p. 3.)

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

Compensatory Education Services

Transition Services

7. Beginning not later than the first IEP to be in effect when a child with a disability turns 16, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb); 34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).) Every such IEP must also include transition services to assist the child in reaching those postsecondary goals. (*Ibid.*)

8. “Transition services” means:

... a coordinated set of activities for an individual with exceptional needs that:

- (1) is designed within a results-oriented process that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to post-school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation;
- (2) is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil, and
- (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

Variety of Vocational Experiences

9. An LEA is not required to guarantee that a student with a transition plan actually obtains a job in the community. However, in an appropriate case, an LEA must, as a transition service, “facilitate the movement” of a disabled student to “integrated employment,

including supported employment” (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) Neither statutes nor regulations specify how frequently during a student’s transition plan an LEA must discharge this duty, or how many employment opportunities it must encourage or attempt to make available, or what variety those opportunities must involve.

10. However, the California Legislature has required the Superintendent of Public Instruction to develop the role and responsibilities of special education in the transition process, including by “[t]he provision of multiple employment options and facilitating job or career choice by providing a variety of vocational experiences.” (Ed. Code, § 56462, subd. (b)(2).) Pursuant to that duty, the State funds and the Department of Education administers Project Workability, through which LEA’s place students with willing employers in jobs in the community and supervise students’ performance in those jobs. (See Ed. Code, §§ 56470-56474.) The intent of the Project Workability scheme is that LEA’s develop “employment training practices” to further its purposes. (Ed. Code, § 56470, subd. (e).)

11. While the duty to provide multiple employment options and a variety of vocational experiences is not imposed directly upon LEA’s, the Legislature’s requirement that the Superintendent make such a variety of opportunities available demonstrates that one clear purpose of special education transition requirements is to expose a student to a variety of employment options so that he or she may make well-informed career choices. It follows that exposure to a single job choice does not necessarily discharge an LEA’s responsibility to facilitate a student’s movement toward employment.

12. All of the legal conclusions from the liability decision are incorporated into this decision.

13. Student is entitled to a compensatory education program that places her in the position she would have been had Fresno not denied Student a FAPE from October 3, 2010, through December 31, 2013. The evidence showed that Student needs to be eased back into a program and needs to develop more solid academic, independent living and vocational skills before she is ready to explore job opportunities. When Student is ready to explore job opportunities, she needs support and coaching.

14. Student is also entitled to some choice in the job fields in which she will receive training and exposure. The ATP at Fairview offers no such input from the participants in the program . Instead, offers a trivial amount of work experience and a cookie-cutter experience.

15. The compensatory education program proposed by EvoLibri, as delineated and modified below, is appropriate for Student. It meets Student’s compensatory needs and is individualized to her unique, complex learning style. This program appropriately compensates Student for the denial of FAPE.

Provider of Compensatory Education Services

16. Fresno did not propose to provide staff and supervision for the compensatory program as outlined in the independent EvoLibri report. Instead, Fresno chose to ignore the recommendations and proposed placing Student in the ATP on Fairview program; a cookie-cutter program, for students younger than Student. Further, Fresno would supplement the program somehow, in some unexplained way, with additional tutoring by college students supervised by a speech therapist, who admitted that she would not follow all of Dr. Glidden's recommendations for Student and would pick and choose what to implement. The ATP on Fairview program is wholly inappropriate for Student. Besides offering an inadequate vocational program, Student would be getting functional skills instruction in areas she has already mastered. The ATP program does not provide any services to any student in the summer, which Student needs. Fresno offered no coordination between the programs and offered no connection between the academic portion of the program and the vocational and other skills taught in the ATP. Student needs the academic portions of her program to be tightly connected, as these skills will form the foundation for her later training.

17. The academic proposal from Fresno is also not adequate. There are only a few programs taught, none of which were chosen for Student based upon her needs. Because of Fresno's history of lack of instruction and appropriate accommodations for Student, it is unknown what programs will work for Student and any program used needs to be flexible and fluid, based upon Student's progress. Both of Fresno's proposals are cookie-cutter programs and Student is entitled to a compensatory program designed for her based upon the denial of FAPE. Fresno wants to place Student into either an existing ATP program where she already mastered many of the skills being taught and that does not take into account her unique needs, or a tutoring program that only uses a limited reading program and without an understanding of her needs. Student is entitled to an individual program based upon her unique needs. Fresno did not propose such a program.

18. Student needs instructors with experience who will follow the recommendations in Dr. Glidden's report. EvoLibri has proposed a program that they can staff and will hire appropriate instructors for Student. EvoLibri is an appropriate provider for Student's compensatory services.

Duration of Compensatory Education

19. As established in the liability decision and the independent assessments, Fresno's denial of FAPE from October 3, 2010, through December 31, 2013, was pervasive and affected Student in all areas of her education. This is not a case where a student was denied a fixed amount of speech and language services for a period of time or where there was a denial in one area like reading. Fresno's denial of FAPE is a comprehensive, long-term denial that has affected Student's ability to be prepared to live an independent life. Given the breadth of the denial of FAPE for Student and Fresno's lack of comprehensive assessment for more than 12 years, determining the length of the compensatory education is difficult.

20. Compensatory education is not a formulaic calculation based on an hour-for-hour replacement of lost services. Ms. Johnston-Tyler provided a reasonable opinion, based on her expertise and Student's needs, about where to place Student to get her where she should be, but for Fresno's denial of FAPE. The program is comprehensive with an emphasis on increasing the academics necessary to prepare Student vocationally and functionally at the beginning with a growing emphasis on vocational preparation and experience. It is not calculated based on an hour-for-hour compensation of the reading, math, writing, executive functioning, independent living, functional and vocational skills that Student missed from October 3, 2010, through the end of her eligibility. Instead, the program is a reasonable plan based on the evidence for putting her where she should have been at the end of her special education eligibility had she not been denied FAPE from October 3, 2010 forward.

21. Although an ALJ has equitable powers to award compensatory education, the award must be based on evidence presented in the hearing. Fresno did not put on any evidence contradicting EvoLibri's recommendation that 55 months of compensatory education services would place Student where she would have been had the denial of FAPE not occurred. Instead, the testimony Fresno did present seemed to be focused on what services it could provide Student a FAPE for the next two years, which is not the standard when determining an award for compensatory education. The un rebutted evidence demonstrated that the recommendation of 55 months for Student is reasonable and, as such, is ordered.

22. Fresno makes several arguments against the compensatory education plan proposed by EvoLibri and administered by EvoLibri, none of which are persuasive. Fresno argues that Student should be given two years of services on an individual basis as compensatory education for the 39 months of the denial of FAPE. Fresno contends that because the services missed would have been delivered in a classroom, not one-to-one, Student needs fewer hours of one-to-one services to compensate. As discussed above, the evidence actually showed the opposite: Student needed and should have had individual instruction during the period she was denied a FAPE. Therefore, Fresno's proposal that Student's compensatory education should be two years fails. More importantly, Fresno presented no evidence to support this theory, as none of their witnesses testified about the duration of compensatory services.

23. Fresno further argued that the EvoLibri program was somehow deficient because it did not propose specific methodologies for Student. Again, the evidence showed just the opposite. No one who has assessed Student has opined that any specific methodology will work for Student, and there needs to be a period of trial and error and several methodologies may have to be tried. The EvoLibri proposal and Order below reflect that reality for Student. Fresno also argues that Ms. Johnston-Tyler somehow agreed that the ATP on Fairview would be appropriate for Student. The record shows that Ms. Johnston-Tyler had not seen and did not know the details of the program and that she was merely stating that there was a possibility that a program such as the ATP on Fairview might work

for Student. The evidence showed that Fairview’s program does not conform to the recommendations from Ms. Johnston-Tyler and would not meet Student’s needs.

24. Fresno also argues that the program proposed by EvoLibri is a “Cadillac” and that it is well beyond the minimal educational benefit standard outlined in *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*). Fresno mistakes the standard for FAPE under *Rowley* for the compensatory standard, which is to put Student where she would have been but for the denial of FAPE. Fresno basically contends that Student is intellectually disabled and has not increased her skills since 2002 and, therefore, she does not need many services. This contention evidences a continuing failure to recognize Student’s unique needs and the role Fresno played in Student’s failure to gain educational benefit. Fresno failed to acknowledge that Student’s failure to gain skills, which it admits, resulted from their ongoing denial of FAPE. Instead, Fresno points to Student’s lack of educational progress to show that she does not need compensatory education with no acknowledgement as to its conduct that caused this loss.

25. To be clear, however, this decision only awards compensatory education for Fresno’s failure to provide Student with FAPE from October 3, 2010, through December 31, 2013. As detailed in the liability decision, Student’s entire special education program was inappropriate. This was not an insignificant denial of FAPE, but a pervasive failure to provide Student with appropriate special education as required by law. As such, this determination of appropriate compensatory education takes into account all current information about Student and attempts to provide a comprehensive program to allow Student to obtain the educational benefit she missed.

ORDER

1. Fresno will fund Compensatory Education for a period of 55 months as follows:

Phase 1:

(Approximately Months 1-6)

Case Management Services of 2 hours per week

	Monday	Tuesday	Wednesday	Thursday	Friday
Hour 1	Reading/Writing	Reading/Writing		Reading/Writing	Reading/Writing
Hour 2	Numeracy	Numeracy	ILS Instruction including mobility, motor skills, and safety	Numeracy	Numeracy
Hour 3	Lunch/Social	Lunch/Social		Lunch Social	Lunch/Social
Hour 4	Executive Functioning	Executive Functioning		Executive Functioning	Executive Functioning
Hour 5	ILS ⁷ Practice	ILS Practice		ILS Practice	ILS Practice

⁷ Independent Living Skills.

Phase 2:
(Approximately Months 6-12)

Case Management Services of 1 hour per week

	Monday	Tuesday	Wednesday	Thursday	Friday
Hour 1	Reading/Writing	Reading/Writing		Reading/Writing	Reading/Writing
Hour 2	Numeracy	Numeracy	Alternate ILS Instruction/ Vocational Development each week	Numeracy	Numeracy
Hour 3	Lunch/Social	Lunch/Social		Lunch Social	Lunch/Social
Hour 4	Executive Functioning	Executive Functioning		Executive Functioning	Executive Functioning
Hour 5	ILS Practice	ILS Practice		ILS Practice	ILS Practice

Phase 3:
(Approximately Months 13-18)

Case Management Services of 1 hour per week.

	Monday	Tuesday	Wednesday	Thursday	Friday
Hour 1	Job Shadow/ Volunteer with Job Coach	Reading/Writing	Job Shadow/ Volunteer with Job Coach	Reading/Writing	Job Shadow/ Volunteer with Job Coach
Hour 2		Numeracy		Numeracy	
Hour 3		Lunch/Social		Lunch Social	
Hour 4		Executive Functioning		Executive Functioning	
Hour 5		ILS Practice		ILS Practice	

Phase 4:
(Approximately Weeks Months 19-24)

Case Management Services of 1 hour per week, Job Retention Services of 1 Hour per week.

	Monday	Tuesday	Wednesday	Thursday	Friday
Hour 1	Part Time Job with Job Coach	Reading/Writing	Part Time Job with Job Coach	Reading/Writing	Part Time Job with Job Coach
Hour 2		Numeracy		Numeracy	
Hour 3		Lunch/Social		Lunch Social	
Hour 4		Executive Functioning		Executive Functioning	
Hour 5		ILS Practice		ILS Practice	

Phase 5:
(Approximately Months 25-48)

Case Management Services of 1 hour per week, Job Retention Services of 1 hour per week.

	Monday	Tuesday	Wednesday	Thursday	Friday
Hour 1	Part Time Job with Job Coach	Reading/Writing			
Hour 2					Numeracy
Hour 3					Lunch Social
Hour 4					Executive Functioning
Hour 5					ILS Practice

Phase 6:
(Approximately Months 49-55)

Case Management Services of 1 hour per week, Job Retention Services of ½ hour per week.

	Monday	Tuesday	Wednesday	Thursday	Friday
Hour 1	Full Time Job with Part Time Job Coach	Full Time Job with Part Time Job Coach	Full Time Job with Part Time Job Coach	Full Time Job with Part Time Job Coach	Full Time Job with Part Time Job Coach
Hour 2					Full Time Job with Part Time Job Coach
Hour 3					Full Time Job with Part Time Job Coach
Hour 4					Full Time Job with Part Time Job Coach
Hour 5					Full Time Job with Part Time Job Coach

2. Student, her Parent, EvoLibri and the teaching staff may mutually agree to alter the start and end times of the schedules above, and the days of the week, as long as the duration of the services on a weekly basis remains the same (i.e., begin the day at 8 a.m. and end at 1 p.m. or begin the day at 10 a.m. and end at 3 p.m., or change the ILS day from Wednesday to Friday).

3. Absences up to five consecutive days due to Student’s illness, holidays, medical appointments or the like will not be made up. Any instruction missed due to unavailability of instructors, unavailability of District space as described in paragraph 6 below, failure of Fresno to promptly contract with or pay any obligation under this Order, or any other failure of Fresno will extend Student’s compensatory education award for an equal time as the time that was missed. Student, EvoLibri and the teaching staff may agree to breaks in weekly increments of no more than eight weeks per year that will also extend the time for compensatory services an equal amount. Should Student be unavailable for medical reasons for more than five consecutive days, this will extend the time for compensatory services an equal amount. Student’s case manager from EvoLibri will have the sole discretion to determine whether missed time is allowed to be made up consistent with the terms of this Order. Once per year, no later than the anniversary of the date of this Order, EvoLibri will provide Fresno an accounting of the dates services were rendered, the dates

that were missed and not available for make-up, a list of dates missed that are eligible for make-up and the new estimated completion date for services. This Order contemplates that the end date for Student's services will likely be later than 55 months from the date of this Order, due to allowed and expected breaks. This Order should not be construed by Fresno as condoning any failure to provide personnel, space or prompt contracting that delays implementation of this order.

4. Fresno will provide transportation reimbursement for travel by Student and providers for community outings, mileage to and from Student's home to the room provided by Fresno for Student and any providers, and to and from any vocational training or employment at the rate it reimburses Fresno employees. This is in addition to the fund amount listed below in paragraph 5.

5. Fresno will provide a fund of \$15,000 for educationally necessary curriculum, including but not limited to technology (e.g., laptop, IPAD, printer), supplies, admission costs for community activities, and bus passes. EvoLibri may purchase and be reimbursed or may direct Fresno to purchase specific items and pay for them directly. Fresno will reimburse EvoLibri within 30 days if EvoLibri pays for these items directly. Fresno will order any of these items, if asked, within five business days of notification. EvoLibri will determine what purchases are educationally necessary. All purchases, with the exception of technology valued at more than \$250.00, at the end of the compensatory period will remain the possession of Student. Any technology worth more than \$250.00 at the end of the compensatory period will be returned to Fresno and will be the property of Fresno.

6. Fresno will provide a room for Student for her program. The room may not be located at a school site, but will be located at a District office. The room must be in a quiet area, have at least two desks, a large table, at least three comfortable chairs, adjacent parking, access to restrooms and be dedicated to Student for the duration of the compensatory education time period, or until notified by Student or EvoLibri that the room will no longer be needed. The room is ordered to be dedicated to Student because of the supplies, technology, and curriculum that will need to be housed in the room and to ensure that Student's supplies, technology and equipment are not inadvertently misplaced if others were to use the space or Student had to move locations. EvoLibri and Student may also utilize other locations including Student's home and other locations in the community.

7. If Student is not ready to move from one phase of the compensatory education remedy, as outlined above, to the next phase or is ready to move to another phase earlier than indicated, EvoLibri will notify Fresno. Fresno will pay for the services that are appropriate for Student at that time in an amount of hours not to exceed the 25 hours of direct services to Student per week plus consultation and job retention services, as necessary. EvoLibri will be solely responsible for determining Student's readiness to move to the next phase. However, regardless of the phase reached, the compensatory education program will end after the 55 months of compensatory services are delivered, including any make up time.

8. Fresno will contract with EvoLibri to provide case management, independent living skills, vocational skills, and all other services outlined in the compensatory remedy without undue delay and no later than 15 days after the date of this decision. EvoLibri will also locate tutors, teachers, trainers, job coaches and any other person necessary to provide services to Student as outlined above and bill Fresno for such services. While only one person, besides the case manager, will work with Student at a time, the different subjects may be contracted to several individuals or entities. EvoLibri may, at its discretion, have Fresno directly contract with and pay any of the tutors, teachers, trainers, job coaches or any other person or entity who provides services to Student under this Order. EvoLibri will notify Fresno if it wishes Fresno to directly contract with any person or entity and Fresno will contract with such person without undue delay. Any time missed due to delay on the part of Fresno or any other provider, will be made up.

9. EvoLibri will be responsible to ensure that recommendations from Dr. Glidden's report shall be implemented for Student. The goals and recommendations from the EvoLibri report will be implemented for Student.

10. For reading and writing, EvoLibri will locate a tutor, teacher or special education teacher with training in specific reading and writing curricula. A peer-reviewed, researched-based reading program and writing program will be used for Student, and its efficacy tracked over each three-month period and the data will be discussed with Student and Parent. If Student does not make sufficient progress after three months, another peer-reviewed, research-based reading or writing program will be tried until such time as a reading or writing program which demonstrates reading or writing progress for Student is located. Both a phonics-based and a sight-word reading program shall be utilized for Student.

11. For mathematics, a functional numeracy program will be implemented. If possible, a peer-reviewed, research-based program should be utilized. The efficacy of the numeracy program will be tracked over each three-month period and the data will be discussed with Student and Parent. If Student is not making sufficient progress, another program shall be implemented.

12. For independent living skills instruction, EvoLibri will attempt to locate a program with other adults of Student's age group (22-30) and functional and independent skill level for Student to attend in the Fresno area. If such a program is identified, Fresno will pay all costs associated with such program so long as costs are comparable to other similar programs located in the state. Unless and until such time a group is located, the services will be delivered one-to-one through EvoLibri.

13. Fresno will have no other ongoing obligations to Student. Fresno will not be required or allowed to convene IEP team meetings, or assess Student. Eligibility is not being extended for Student.

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. This was determined in the liability decision: Issues 1 and 2 were not decided, and Student prevailed on Issues 3, 4, 5, 6a, 6b, 6c, 6e, 7, 8, and 9. Fresno prevailed on Issue 6d.

RIGHT TO APPEAL

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

Dated: September 16, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings