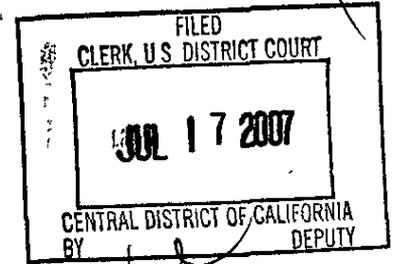


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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

J.M., et al.,

Plaintiffs,

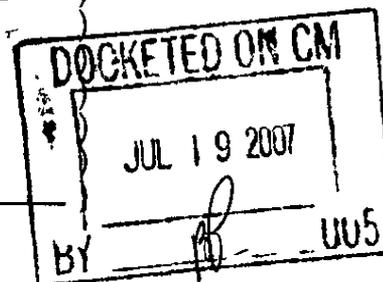
v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Defendant.

Case No. CV 06-5330 GAF (AJWx)

**MEMORANDUM AND ORDER
REGARDING PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**



I.

INTRODUCTION & BACKGROUND

J.M., a seven year old girl with autism, receives special education services under the IDEA from Los Angeles Unified School District ("LAUSD" or the "District"). As an element of her Individualized Education Plan ("IEP"), LAUSD initially provided J.M. with an additional adult aide ("AAA"), and with behavior support through a nonpublic agency called the Center for Autism and Related Services ("CARS"). None of these services provided J.M. with appropriate assistance and support. The AAA initially assigned to J.M. was an adult male who could not provide appropriate help

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1 with J.M.'s toileting needs because he was a male. Nevertheless, he continued in
2 that role until he apparently left the school system, at which time LAUSD provided no
3 adult assistant for a period of several months. Over the same period, CARS, which
4 was to provide services from March to September 2005, performed abysmally and
5 concealed its inadequate performance with misleading reports that significantly
6 overstated J.M.'s progress when, in fact, her behavior regressed during CARS tenure.

7 After the CARS services terminated, J.M.'s parents in September 2005
8 retained a firm called Stepping Stones, which J.M.'s parents believed would be, and
9 which proved, more successful. Indeed, Stepping Stones helped J.M. attain
10 significant progress toward her goals, and its staff even coexisted with District
11 personnel in J.M.'s classroom, at least until the District reintroduced an AAA who,
12 though of the appropriate gender, had not completed the District's autism training.

13 Pleased Stepping Stones' performance, J.M.'s parents asked LAUSD to pay
14 for the firm's services, but LAUSD refused. J.M.'s parents then initiated
15 administrative proceedings in which they contended that LAUSD's June 2005 IEP
16 failed to provide J.M. with a Free and Appropriate Public Education ("FAPE") because
17 of the inappropriate AAAs and CARS' incompetence.

18 The ALJ agreed with Plaintiffs, but provided only a limited remedy. She held
19 that LAUSD had not provided a FAPE because of the inappropriate AAAs and
20 because J.M.'s June 2005 IEP team – on the basis of CARS' reports – concluded
21 J.M. no longer needed behavior support services and therefore offered none. She
22 also agreed that Stepping Stones provided J.M. with a meaningful benefit. Therefore,
23 the ALJ ordered LAUSD to reimburse J.M.'s parents for Stepping Stones' fees from
24 July 2005 through the date of her decision. Prospectively, the ALJ ordered LAUSD to
25 provide J.M. with approximately 45 hours per week of behavioral therapy services.
26 However, though she noted J.M.'s difficulty with transitions, concluded Stepping
27 Stones had been an appropriate provider, and even **recommended** that LAUSD
28 choose Stepping Stones to provide the mandated services given that J.M.'s

1 communication and socialization skills were finally beginning to improve, the ALJ
2 stopped short of **ordering** LAUSD to retain Stepping Stones prospectively. Rather,
3 the ALJ concluded that she lacked authority to award a specific provider or
4 methodology, and held that the District retained discretion to select between
5 “reputable” nonpublic agencies, so long as the chosen vendor was not CARS.

6 J.M. and her parents challenged the ALJ’s limited remedy by filing suit in this
7 Court and have now moved for summary judgment. Their motion abandons the
8 theory – previously advanced in the Complaint and in opposition to the LAUSD’s
9 motion to dismiss – that J.M. required a particular methodological approach to autism
10 services called “Lovaas-style ABA” that only Stepping Stones could provide. (See
11 03/02/07 Order.) Plaintiffs now frame the issue more narrowly: they simply contend
12 the ALJ committed legal error in concluding she could not order a particular provider –
13 Stepping Stones – even after concluding LAUSD failed to provide a FAPE. As a
14 result, Plaintiffs argue, they are entitled to reimbursement for Stepping Stones’ fees
15 for the time between the ALJ’s decision and J.M.’s June 2006 IEP – a period of
16 approximately three weeks.¹ Additionally, Plaintiffs ask the Court to hold they were
17 prevailing parties in the proceedings below and therefore that they are entitled to
18 attorney’s fees.

19 As discussed in greater detail below, the Court finds Plaintiffs’ motion
20 meritorious. Because neither party disputes the ALJ’s factual findings, the motion
21 presents pure questions of law. Moreover, this case presents a somewhat unique
22 circumstance where FAPE was denied due to LAUSD’s inability to distinguish
23 competent providers from incompetent ones, and thus an appropriate remedy should
24 have curtailed LAUSD’s discretion and allowed Plaintiffs to select J.M.’s interim

25
26 ¹ Though the relief requested seems modest, Plaintiffs may be of the view that a decision in this
27 case enhances the likelihood of obtaining future Stepping Stones services by invoking the
28 IDEA’s stay put provision, 20 U.S.C § 1415(j). (Mot. at 12-13.) The Court expresses no opinion
as to the effect of the stay put provision as applied to this case, but does express its sincere
hope that resolution of the instant motion will provide the groundwork for a mutually satisfactory
resolution of the parties’ apparently on-going dispute.

1 provider until her next IEP meeting. In short, the ALJ erred in concluding she could
2 not order LAUSD specifically to provide Stepping Stones services, and Plaintiffs are
3 entitled to compensation for providing the three weeks of services themselves.

4 Additionally, it is clear that the ALJ afforded significant relief to Plaintiffs by
5 concluding LAUSD denied J.M. a FAPE and awarding reimbursement through the
6 date of her order. Therefore, Plaintiffs were the prevailing parties below and thus are
7 entitled to attorney's fees incurred during those proceedings.

8 II.

9 DISCUSSION

10 **A. THE DISTRICT'S DISCRETION – OR LACK THEREOF – TO SELECT PROVIDERS**

11 **1. OVERVIEW OF THE IDEA AND STANDARD OF REVIEW**

12 Under the IDEA, school districts' obligation to provide FAPE means they must
13 (1) offer students with disabilities an IEP that is designed to (a) address their unique
14 needs and (b) provide them a meaningful educational benefit in the least restrictive
15 environment, and; (2) provide special education and related services that conform to
16 the IEP. See Bd. of Educ. v. Rowley, 458 U.S. 176, 188-90 (1982); 20 U.S.C. §
17 1401(9). Students may challenge the provision of FAPE in state administrative
18 hearings, and any party that is "aggrieved" by the decision of the hearing officer may
19 bring a civil action in either state or federal court. 20 U.S.C. § 1415(i)(2). The party
20 bringing such a civil action bears the burden of proof therein. Clyde K. v. Puyallup
21 Sch. Dist., No. 3, 35 F.3d 1396, 1399 (9th Cir. 1994), superceded by statute on other
22 grounds as stated in M.L. v. Fed. Way Sch. Dist., 342 F.3d 1052, 1063 n.7 (9th Cir.
23 2003).

24 The scope of the civil action is defined by the IDEA, which provides: "the court
25 shall receive the records of the administrative proceedings; shall hear additional
26 evidence at the request of a party; and basing its decision on the preponderance of
27 the evidence, shall grant such relief as the court determines is appropriate." 20
28 U.S.C. § 1415(i)(2)(B). Because the statute provides for the consideration of more

1 than the bare administrative record and confers broad remedial authority on the
2 Court, the Court applies a less deferential standard than it applies in other
3 administrative review cases. Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1471
4 (9th Cir. 1993). Controlling case law suggests that the proceeding requires a de novo
5 review of the hearing officer's legal conclusions, which nonetheless (1) gives some
6 limited deference to the hearing officer's factual conclusions when they are thoughtful
7 and thorough; and (2) does not undermine the role of the hearing officer by
8 conducting a trial de novo. If a reviewing court determines that a FAPE has been
9 denied or that the hearing officer otherwise erred, it shall grant such relief as the court
10 determines is appropriate. 20 U.S.C. § 1415(i)(2); Rowley, 458 U.S. at 188-90. Here,
11 because the parties do not dispute the ALJ's factual conclusions, no deference is
12 required, particularly in light of the ALJ's conclusory analysis of the dispositive legal
13 question.

14 At the same time, the provision for judicial review does not give courts
15 unlimited discretion to review and direct local educational policy. Indeed, because
16 courts lack the specialized knowledge and experience necessary to resolve persistent
17 and difficult questions of educational policy, the IDEA should not be read to displace
18 the primacy of states in the field of education. Rowley, 458 U.S. at 208. To this end,
19 "once a court determines that the requirements of the Act have been met, questions
20 of methodology are for resolution by the States." Id. In part, the rationale for avoiding
21 determinations of best methodology is the principle that the IDEA creates no
22 entitlement to the "best" program, but rather an educational opportunity that meets a
23 baseline standard. See id. at 204; Gregory K. v. Longview Sch. Dist., 811 F.2d 1307,
24 1314 (9th Cir. 1987).

25 But when the requirements of the Act have not been met – when a disabled
26 child has been denied a FAPE – the Act confers substantial authority upon the courts
27 to craft relief, including in the form of prospective relief. E.g., Park ex rel. Park v.
28 Anaheim Union High Sch. Dist., 464 F.3d 1025, 1033 (9th Cir. 2006). Addressing the

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1 scope of the federal court's remedial authority under the Act, the Supreme Court has
2 held:

3 Absent other reference, the only possible interpretation is that the
4 relief is to be "appropriate" in light of the purpose of the Act. As
5 already noted, this is principally to provide handicapped children
6 with "a free appropriate public education which emphasizes special
7 education and related services designed to meet their unique
8 needs." The Act contemplates that such education will be provided
9 where possible in regular public schools, with the child participating
10 as much as possible in the same activities as nonhandicapped
11 children, but the Act also provides for placement in private schools
12 at public expense where this is not possible. [citations omitted] ***In a
13 case where a court determines that a private placement
14 desired by the parents was proper under the Act and that an
15 IEP calling for placement in a public school was inappropriate,
16 it seems clear beyond cavil that "appropriate" relief would
17 include a prospective injunction directing the school officials
18 to develop and implement at public expense an IEP placing the
19 child in a private school.***

20 Burlington Sch. Comm. v. Mass. Dep't of Educ., 471 U.S. 359, 369-70 (1985). Thus,
21 in a lawsuit where a local school district asserted that the IDEA does not authorize a
22 federal court to order private placement of a disabled child at public expense, Chief
23 Justice Rehnquist, writing for a unanimous Supreme Court, rejected the argument.

24 With Rowley and Burlington as the principal authorities establishing the scope
25 of permitted relief under the statute and the circumstances under which such relief
26 may be obtained, the Court turns to a consideration of the issues presented in this
27 case.

28 **2. ANALYSIS**

a. The ALJ Had Power to Order LAUSD to Retain Stepping Stones

The parties' dispute here essentially turns on whether Rowley's deference to
educators' **methodological** judgments – which by its terms applied only where a
FAPE had been **provided** – extends to **staffing** decisions even when a FAPE has
been **denied**, or, instead, whether Burlington's willingness to issue prospective
injunctions when a FAPE has been denied allows courts (and, by extension, hearing
officers) to order specific placements. The Court acknowledges that neither case is
directly on point: in Rowley, a FAPE had been provided, while in Burlington, the Court

1 did not refer to placements at a specific private school, but rather to a "private"
2 placement in general. Nonetheless, the Burlington rationale is illuminating, and
3 resolves the question in favor of Plaintiffs here.

4 Burlington referred to a case where **public** placement was not appropriate,
5 and a **private** placement was. Therefore, the prospective remedy was just that – a
6 correction of the arrangement that failed to provide FAPE by imposition of an
7 arrangement that would. The "appropriateness" of this remedy is entirely consistent
8 with Rowley, and also with this Court's reasoning on the motion to dismiss that
9 Plaintiffs here, to earn a remedy based on methodology, would need to demonstrate
10 that the previous methodology failed, and the new one was the only one that would
11 provide a FAPE.

12 Similarly, on the present motion, Plaintiffs request a remedy that goes to the
13 heart of the undisputed FAPE violation. Plaintiffs essentially contend that the reason
14 LAUSD denied J.M. a FAPE was because it selected an incompetent behavioral
15 services vendor to work with her, failed to detect the incompetence, and presented an
16 IEP offer that was not tailored to her individual needs because it accepted the
17 vendor's overly optimistic, indeed erroneous, assessment of her behavioral and
18 educational development. Moreover, LAUSD also denied J.M. a FAPE because it
19 failed to manage its **own** staff, as it first placed J.M. with an AAA that was the wrong
20 gender, later inexplicably failed to provide any AAA whatsoever, and then finally
21 provided an AAA that had not completed LAUSD's own training regimen for assisting
22 children with autism. Given the District's undisputed failure to provide J.M with a
23 FAPE, her parent's request that the ALJ direct the District to require that services be
24 provided by Stepping Stones, which had been effective in addressing J.M.'s many
25 problems, sought nothing more than a remedy for the District's FAPE violations.
26 Because LAUSD had proven itself incapable of distinguishing between competent
27 providers and incompetent ones, or of managing its own staff, the ALJ's
28 determination to leave LAUSD with unfettered discretion to select J.M.'s provider

1 denied Plaintiffs the fundamental remedy created by the IDEA. Because Stepping
2 Stones had demonstrated its ability to help J.M., particularly given her difficulties with
3 transitions, this was an appropriate case for awarding the plaintiffs their preferred
4 provider.

5 Moreover, the more recent trend appears to hold that hearing officers and
6 courts have power to direct specific placements. See 58 Admin. L. Rev. 401, 407
7 nn.35-39 (2006) (citing cases). Although the Court has located no Ninth Circuit
8 authority on this point, the discussion of the District Court for the District of Columbia
9 is illuminating:

10 [W]hen [the district] presented no evidence in favor of its proposed
11 placement, and the plaintiffs presented evidence favoring a
12 residential placement, the hearing officer could have directed a
13 residential placement without referring the matter back to [the
14 district] if she determined that such action was warranted and if the
15 evidence established that Daniel required a residential placement.
16 **Furthermore, the hearing officer was not limited to making a
17 determination that Daniel requires a residential placement. If
18 appropriate, she could have determined that a specific
19 placement is appropriate.** For example, the hearing officer could
20 have determined that a residential placement is required and that
21 the Vanguard School is an appropriate placement. **Depending
22 upon the facts developed at the hearing, the hearing officer
23 could then direct the placement supported by the evidence, or
24 afford [the district] a reasonable opportunity to propose an
25 alternative residential placement.**

18 Diamond v. McKenzie, 602 F. Supp. 632, 639 (D.D.C. 1985) (emphases added);
19 accord Diatta v. Dist. of Columbia, 319 F. Supp. 2d 57, 65 (D.D.C. 2004) (ordering
20 parents' proposed placement under rubric of compensatory education, and holding
21 that hearing officer's failure to do so constituted an abdication of his authority).

22 Concededly, ordering a particular private placement at the school district's
23 expense is distinguishable from ordering the district to retain a particular vendor to
24 perform services in the public classroom. In the latter case, which is the issue raised
25 here, the potential for intrusion into the school district's judgment is much greater.
26 District personnel will inevitably be forced to work with whichever firm is retained, and
27 the success of that relationship will greatly impact the classroom environment.
28

1 But on the present record, Stepping Stones is acceptable. LAUSD has
2 offered no reason why it declined to retain Stepping Stones,² and even if it were to
3 refer to the apparent clashes between its staff and Stepping Stones personnel, the
4 Court would be unpersuaded. According to the ALJ, whose findings are undisputed
5 here, disagreements arose only when the District finally reintroduced an AAA to work
6 with J.M. Because the AAA had not completed autism training, it cannot be said that
7 a qualified AAA could not have worked harmoniously with Stepping Stones.
8 Moreover, the Stepping Stones arrangement was entirely privately funded at that
9 point, meaning that Stepping Stones personnel felt free to pursue goals other than
10 those articulated in J.M.'s IEP. By contrast, requiring Stepping Stones to operate
11 under contract with LAUSD would create an opportunity for the staff of both entities to
12 pursue the same goals, which would likely avoid some of the philosophical disputes
13 that appear to have arisen. Moreover, even after this dispute arose, LAUSD indicated
14 it was willing to work with Stepping Stones, though it declined to follow through.

15 As a result, it appears that LAUSD objected to Stepping Stones merely to
16 guard its discretion to select providers. Under these narrow circumstances, however,
17 LAUSD's discretion was curtailed when it failed to select competent providers.

18 **b. The District's Arguments Are Unavailing**

19 LAUSD's arguments in support of the ALJ's limited remedy are unavailing and
20 essentially suffer from two fatal defects. First, in support of its contention that districts
21 retain discretion as to staffing, LAUSD repeatedly cites cases in the Rowley line
22 where a FAPE was *provided*. (Opp. at 1-2, 11-15 (citing M.M. & B.M. ex rel. C.M. v.
23 Sch. Bd. of Miami-Dade County, 437 F.3d 1085, 1103 (11th Cir. 2006) (holding that
24 an IEP that did not provide auditory-verbal therapy did not deny child a FAPE); Weiss
25 v. Sch. Bd. of Hillsborough County, 141 F.3d 990, 997-98 (11th Cir. 1998) (finding no

26
27 ² Despite making an earlier motion apparently designed to protect its ability to make
28 methodological choices, LAUSD has not argued here that Stepping Stones provides any
particular methodology whatsoever, let alone one it views as inappropriate for J.M.

1 violation of the IDEA per Rowley); Lachmann v. Ill. Bd. of Educ., 852 F.2d 290, 297
 2 (7th Cir. 1988) (citing Rowley); N.R. v. San Ramon Valley Unified Sch. Dist., No. No.
 3 C 06-1987, 2007 WL 216323, at *7 (N.D. Cal. Jan. 25, 2007) ("The court is not
 4 persuaded that the IEPs that were developed for the periods of time in question were
 5 legally insufficient."); Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580, 259 F. Supp.
 6 2d 880, 885 (D. Minn. 2003) (holding that the district's refusal to assign the service
 7 provider of plaintiff's choice did not constitute a denial of FAPE)).³ As explained
 8 above, these cases are distinguishable in a crucial respect, because they do not
 9 purport to construe the scope of hearing officers' (and courts') power to correct a
 10 **FAPE denial**.

11 Second, LAUSD cautions that an order granting Plaintiffs' request would
 12 create a slippery slope that would trigger an avalanche of future litigation, as parents
 13 would repeatedly demand authority to select the providers that would implement
 14 students' IEPs. (See Opp. at 2, 16.) But this argument ignores the defining
 15 circumstances of this case, which, one would hope, are likely to arise only rarely:
 16 here, the FAPE denial was due in significant part to the District's **retention of and**
 17 **reliance on an incompetent provider**, and therefore an appropriate remedy must
 18 remove the District's discretion to unilaterally select between providers. This narrows
 19 the ruling considerably, and therefore levels out LAUSD's perceived slippery slope.

20 Many of LAUSD's remaining arguments are even more easily dismissed. As
 21 to the contention that Plaintiffs presented no evidence of Stepping Stones'
 22 competence (Opp. at 17), LAUSD overlooks the undisputed fact that J.M. made
 23 dramatic improvements with Stepping Stones. Indeed, LAUSD does not argue that
 24

25 ³ LAUSD also cites a case that is inapposite here. In Johnson ex rel. Johnson v. Special Educ.
 26 Hearing Office, the Ninth Circuit affirmed denial of a preliminary injunction in part on the ground
 27 that the plaintiff was not likely to show that the IDEA's "stay put" provision, 20 U.S.C. § 1415(j),
 28 requires a previously non-responsible agency to provide the exact same vendors and
 supervisors to a disabled child who transitions between educational agencies. 287 F.3d 1176,
 1180-82 (9th Cir. 2002). Here, Plaintiffs have not yet attempted to invoke the "stay put"
 provision, which means Johnson has no bearing on the present dispute.

1 Stepping Stones is inadequate to provide J.M. with a FAPE. Moreover, as to the
2 argument that the costs of Stepping Stones' services – approximately \$2,587 per
3 week for the one-on-one services – suggested that LAUSD was free to choose other
4 providers (Opp. at 15 & n.13), LAUSD has provided no information as to the cost of
5 its other vendors (or even identified the one it offered to provide J.M.). Therefore, any
6 contention that Stepping Stones was prohibitively expensive is impossible to evaluate,
7 as on this record, other vendors may have been even more expensive.

8 Similarly impossible to evaluate is the argument (Opp. at 16) that an award of
9 prospective relief through a specific nonpublic agency would create the untenable
10 situation that a district could later be found liable for actions of an agency it was
11 forced to employ. Although the ALJ imputed CARS' conduct to LAUSD in this case,
12 LAUSD cites no authority that would compel the same result if LAUSD were legally
13 compelled to retain Stepping Stones and Stepping Stones performed badly. In short,
14 the imputation of the service provider's conduct to the district might or might not be
15 appropriate depending on the circumstances, but the Court need not speculate
16 because that question is not presented on these facts. In any event, any difficulties
17 raised by that question are irrelevant to the issue before the Court now.

18 Finally, the Court rejects LAUSD's contention (Opp. at 17-18) that Plaintiffs
19 cannot convert their request for prospective relief at the administrative hearing into a
20 request for reimbursement now. As Plaintiffs note, their argument is that the ALJ
21 erroneously deprived them of three weeks of Stepping Stones' services – that is, the
22 period between her order at J.M.'s June 2006 IEP – by construing her own authority
23 too narrowly. Because that period of time has long since come and gone, and
24 because J.M.'s parents paid Stepping Stones' fees when the District should have
25 done so, reimbursement under these circumstances seems an entirely "appropriate"
26 remedy and well within the Court's statutory authority. *Cf. Burlington*, 471 U.S. at
27 369-70; *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479,
28 1485 (9th Cir. 1992) ("Parents have an equitable right to reimbursement for the cost

1 of providing an appropriate education when a school district has failed to offer a child
2 a FAPE.”).

3 In sum, the ALJ erred in concluding she lacked authority to require the District
4 to retain Stepping Stones prospectively. Moreover, because the District has offered
5 no reason why Stepping Stones is an inappropriate provider, and because it is
6 undisputed that Stepping Stones has offered J.M. a meaningful educational benefit,
7 the District must compensate J.M.’s parents by reimbursing the fees they paid
8 Stepping Stones during the period between the ALJ’s decision and J.M.’s June 2006
9 IEP.

10 **B. PREVAILING PARTY STATUS**

11 Plaintiffs also ask the Court to award summary judgment on their second
12 claim for relief, which seeks a determination that they were the prevailing parties in
13 the administrative proceedings below. This request also has merit.

14 The Ninth Circuit recently addressed prevailing party status for IDEA cases in
15 some detail. It affirmed that “[f]or the purpose of attorney’s fee awards, a prevailing
16 party is defined as a party which succeeds on any significant issue in litigation which
17 achieves some of the benefit the parties sought in bringing the suit.” Park, 464 F.3d
18 at 1034 (internal citations, quotation marks, and alterations omitted). Moreover, “[a]
19 party is ‘prevailing’ where it can point to a resolution of the dispute which changes the
20 legal relationship between itself and the defendant.” Id. at 1035 (internal citations and
21 quotation marks omitted). Further:

22 [T]he prevailing party inquiry does not turn on the magnitude of the
23 relief obtained. Accordingly, a prevailing party need not succeed
24 on all issues, but only on any significant issue. Moreover, a
prevailing party need not achieve all of the relief claimed, but
merely some of the benefit the parties sought in bringing the suit.

25 Id. (internal citations and quotation marks omitted). Therefore, so long as the relief
26 achieved is not de minimis (in the sense that it confers no rights on the party), it will
27 suffice to confer prevailing party status and thus an award of attorney’s fees. See id.
28 at 1036-37.

1 Plaintiffs easily meet this standard here. Although the parties stipulated at the
2 outset of the administrative hearing that LAUSD would pay for Stepping Stones
3 services through the beginning of the hearing, this stipulation did not extend through
4 the date of the ALJ's order and did not result in LAUSD admitting that it had denied
5 FAPE. The finding of FAPE denial goes to the core of the IDEA's statutory framework
6 and entitled J.M. and her parents to various remedies, many of which the ALJ in fact
7 awarded. Therefore, Plaintiffs achieved material success through the administrative
8 proceeding that was not de minimis, and thus were the prevailing parties below. See
9 id. (holding that a hearing officer's finding that the district denied FAPE was enough to
10 confer prevailing party status).

11 LAUSD's contentions otherwise are quickly rejected. First, contrary to its
12 suggestion (Opp. at 22), the Court need not assess Plaintiffs' "degree of success" to
13 determine prevailing party status. In advancing this proposition, LAUSD misreads
14 (and miscites) Aguirre v. Los Angeles Unified School District, 461 F.3d 1114 (9th Cir.
15 2006), which merely held that district courts must evaluate "degree of success" in
16 IDEA cases before determining *the reasonable amount of fees*. Id. at 1117.
17 Because Aguirre did not purport to address prevailing party status, and because
18 Plaintiffs have not yet asked for any particular amount to be awarded, Aguirre is
19 inapposite at this stage. And, for the same reason, it is irrelevant that Plaintiffs have
20 not yet submitted billing records and evidence as to the reasonable rate, though of
21 course they must do so eventually to receive any particular amount.

22 Accordingly, Plaintiffs are correct that they can be summarily awarded
23 prevailing party status.

24 IV.

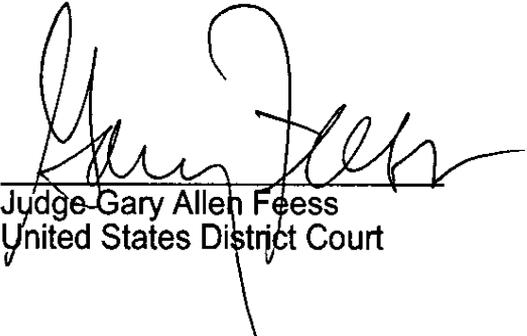
25 CONCLUSION

26 For the foregoing reasons, Plaintiffs' motion is **GRANTED**. The Court holds
27 Plaintiffs are entitled to reimbursement from LAUSD for Stepping Stones' services
28 between the ALJ's decision and J.M.'s June 2006 IEP meeting. Moreover, Plaintiffs

1 were the prevailing party below and therefore are also entitled to their reasonable
2 attorney's fees in those proceedings. Plaintiffs shall submitted a proposed judgment
3 reflecting both aspects of this order. Should the parties be unable to resolve the
4 proper amount of the attorney's fees award, Plaintiffs shall file a regularly noticed
5 motion with appropriate supporting documentation of the reasonable hours billed and
6 the reasonable hourly rate.

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8 IT IS SO ORDERED.

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10 DATED: July 17, 2007


11 Judge Gary Allen Feess
12 United States District Court
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