

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

MOTHER, ON BEHALF OF STUDENT,

v.

CORONADO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2007120415

DECISION

Administrative Law Judge (ALJ) Darrell L. Lepkowsky, Office of Administrative Hearings, Special Education Division, State of California (OAH), heard this matter in Coronado, California on April 2, 3, 4, 8, and 9, 2008. Student's mother (Mother) represented Student.¹ Student attended the hearing most afternoons after his classes. Sundee M. Johnson, Esq., represented the Coronado Unified School District (District). Richard Erhard, the District's Director of Pupil Services, was present throughout the hearing.

Student filed his original complaint on December 12, 2007. On January 3, 2008, OAH granted Student's unopposed motion to continue the proceedings. On January 16, 2008, OAH issued a scheduling order. Student subsequently filed a motion to amend his complaint, requesting that the original hearing dates be retained. The District did not oppose either Student's motion to amend or his request that the hearing dates be retained. OAH granted Student's motion to amend and to retain the hearing dates in an order issued on January 31, 2008. The hearing began as scheduled on April 2, 2008. Oral and documentary evidence were received during the hearing. At the hearing, the ALJ granted the parties' request to file written closing arguments. Upon receipt of written closing arguments on April 18, 2008, the matter was submitted and the record was closed.

¹ Mother is an attorney licensed outside of California.

PROCEDURAL ISSUE

In his closing brief, Student raised two issues not specifically identified in the Order Following Prehearing Conference, issued by the ALJ on March 21, 2008. First, Student alleges that the District predetermined its decision to exclude pre-teaching, post-teaching, and individual teaching services from the offer of an individualized education program (IEP) it made dated October 8, 2007.² Second, Student alleges, in essence, that the District predetermined the amount of psychological counseling services it was going to offer to Student and predetermined its decision not to continue offering Student these services through a private licensed clinical psychologist.

Generally, a party who requests a due process hearing may not raise issues at the hearing that were not raised in the request, unless the opposing party agrees otherwise. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.) However, in the instant case, a review of Student's original complaint and his amended complaint indicate that both contain multiple references to procedural violations that Student alleges were committed by the District, including predetermination of his placement and predetermination of the amount of counseling services offered as well as the provider of the services. The District was therefore under notice that Student had put predetermination at issue.

Additionally, Student specifically raised two broad issues in his complaints. First, whether the District denied him a free appropriate public education (FAPE) by failing to implement his current IEP when he entered high school. Second, whether the District's October 2007 IEP failed to offer Student a FAPE because it was not reasonably calculated to provide meaningful educational benefit. Since a student is entitled to both procedural and substantive protections of the Individuals with Disabilities Education Act (IDEA), an analysis of whether a school district provided a FAPE to a student encompasses both. Whether a school district met its procedural obligations, and, specifically, whether it predetermined its offer, are relevant components to the determination of whether an IEP constituted a FAPE. A parent's right to be involved in the development of her child's IEP is among the most important procedural safeguards created by the IDEA. (*Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d. 877, 882.)

Further, Student also questioned several witnesses at hearing regarding these issues, without objection by the District on relevance grounds. Finally, the District addressed and argued these alleged procedural violations in its closing brief. The inclusion of the procedural component of these allegations therefore does not prejudice the District.

In sum, because the issues of predetermination of pre-teaching, post-teaching, and individual teaching and predetermination of counseling services were raised in Student's

² There were four IEP meetings held before the District made its final IEP offer: October 8, 2007, October 19, 2007, November 15, 2007, and December 4, 2007. For brevity, the ALJ will refer to this IEP as the October 2007 IEP.

complaints, are subsumed in the two broad issues raised by Student in his complaints, were addressed by testimony and documentary evidence presented at hearing, and were briefed by the District in its closing brief, the ALJ has included them as issues for determination in this Decision.

ISSUES

1. Did the District deny Student a FAPE by failing to implement his last agreed-upon individualized education program (IEP), dated October 2006, when he began high school August 28, 2007?
2. Did the District predetermine its decision to eliminate pre-teaching, post-teaching, and individual teaching services in the October 2007 IEP?
3. Did the District commit procedural violations of the Individuals with Disabilities Education Act by predetermining the amount of psychological counseling services and the service provider in the October 2007 IEP, by failing to consider the recommendations of Student's psychologist, and by failing to give his Mother prior written notice of the District's decision to reject those recommendations?
4. Was the District's IEP offer of October 2007 reasonably calculated to offer FAPE to Student? Student alleges that the IEP fails to offer him a FAPE because it fails to provide or address the following:
 - a. Appropriate counseling services and an appropriate counselor;
 - b. Appropriate social/emotional goals;
 - c. Appropriate speech and language services;
 - d. Appropriate present levels of academic performance;
 - e. Appropriate resource support that is individually tailored to Student's needs, including one-on-one support and small group support, rather than independent study;
 - f. Appropriate support to transition Student from one school year to the next, including parent participation.
5. Did the District's IEP offer of October 2007, substantively deny Student a FAPE because it failed to include the following accommodations:
 - a. Provision of vocabulary words in advance;
 - b. Pre-teaching, post-teaching, and supplemental teaching for academic subjects;
 - c. Study guides;
 - d. Written directions and instructions or, if directions and instructions were oral, comprehension checks to ensure Student understood them;
 - e. Social facilitation for group projects.

REQUESTED REMEDIES

Student seeks reimbursement of parent-funded education and services, and compensatory education. Mother also requests that the District reimburse her for the hours she spent implementing Student's IEP and tutoring him.

CONTENTIONS OF THE PARTIES

Student contends that the District failed to implement his IEP after he transitioned from middle school to high school in the fall of 2007. Student alleges that the District was aware since the development of his IEP in October 2006, while he was in eighth grade, that it would not be able to implement the IEP at Coronado High School (CHS), the only high school in the District. Student alleges that the District made plans to address its inability to implement his IEP at CHS, but never followed through with those plans and never offered any alternative to the IEP. Rather, the District simply ceased implementing material portions of the IEP. Student also contends that the District's October 2007 IEP offer procedurally and substantively failed to offer him a FAPE. Student asserts that the District predetermined its decision to cease offering him pre-teaching, post-teaching, and individual teaching services and predetermined its decision to continue only offering him two hours a month of psychological counseling services, in spite of the recommendation of his psychologist that his services increase to three times a month. Student also maintains that the District predetermined its decision to cease offering him psychological counseling services through a private licensed clinical psychologist, failed to consider the recommendations of his psychologist with regard to the amount and provider of psychological services Student needed, and failed to give him and Mother prior written notice of these decisions.

The District admitted at hearing and in its closing brief that it had failed to implement all portions of Student's IEP when he started high school in late August 2007. However, the District contends that its failure to implement the IEP did not result in any loss of educational benefit to Student because Student received grades of A or B in all his classes. With regard to the October 2007 IEP, the District asserts that it did not predetermine any component of the IEP, considered the recommendations of Student's psychologist, and gave him and his mother adequate prior written notice of the IEP.

Student also contends that the District's October 2007 IEP offer failed substantively to offer him a FAPE. The District maintains that the offer it made was reasonably calculated to offer Student educational benefit. However, because the ALJ finds that the District has failed to meet procedural requirements of the IDEA, as the ALJ fully discusses below, it is unnecessary for the ALJ to address whether the District's proposed IEP substantively met the requirements for a FAPE.

Finally, with regard to Student's requested remedies, the District offers that it has already agreed to reimburse Mother for costs she incurred for private tutoring and additional counseling sessions for Student. However, the District asserts that Mother is not entitled to

reimbursement for the time she spent working with Student and that Student is not entitled to any compensatory education.

FACTUAL FINDINGS

Jurisdiction and Background

1. Student is a 15-year-old male. At all relevant times Student was a resident of the District who was eligible for special education based on a specific learning disability and a speech or language impairment. The parties do not dispute either Student's eligibility for special education or his eligibility categories.

2. Student was first found eligible for special education when he was three years old. At the time, Student lived outside of California. Student's previous school district ultimately placed him at a non-public school (NPS) and offered him extended school year (ESY) services both in that district and in California.

3. Student moved with his family to Coronado when he was in fourth grade. After reviewing the IEP Student brought with him, the District determined that it could not provide Student with the placement and services he required at one of its own elementary schools given the small size of the District and its corresponding lack of available programs for special education students. The District offered Student, and Mother accepted, placement at the same NPS Student had attended for summer school in California. While not within the boundaries of the District, the NPS was within commuting distance from Student's home in Coronado. The cost to the District for Student's education at the NPS was approximately \$50,000 a year.

4. Shortly after Student began sixth grade, Bruce Cochrane, who was the new Director of Pupil Services for the District, approached Mother to discuss the possibility of having Student attend a District school. Cochrane and Mother worked with other District personnel to design what ultimately became a "school within a school" at Coronado Middle School, the only middle school in the District. The Coronado School Board approved funding for the program, named the Coronado Academy (Academy).

5. The Academy is modeled after other non-public schools and is designed to provide special education and related services to middle school children with special needs. The program provides a small, structured classroom (a maximum of 12 students), individualized programming for each student, and multi-sensory teaching strategies. The program differs from an NPS, however, in that core academic subjects, such as language arts, history and mathematics, are co-taught by regular education teachers with support from special education teachers. Each student is mainstreamed into general education middle school classes on an individual basis and as appropriate to his or her needs and abilities.

6. When Student started seventh grade at the Academy, his program initially consisted of full enrollment in Academy classes. However, based on Student's abilities, his IEP team soon began mainstreaming him in general education classes, first in mathematics, then in science. Student's IEP at the time, which was fully implemented in seventh grade, included individual and group instruction in reading, as well as pre-teaching and post-teaching of math and science from his Academy teachers.³ Student received speech and language services after his regular school day. Many of the Academy teachers were trained in verbalization and visualization,⁴ a teaching methodology developed by the Lindamood Bell institute. For the last six weeks of seventh grade, Student's IEP team decided to mainstream him in a combined history/language arts class to determine if Student would be successful in an almost fully mainstreamed placement. Because Student was successful in this placement, his IEP team, including Mother, decided to mainstream him for all academic subjects in eighth grade.

Student's Unique Needs

7. Allison Sullivan, Student's eighth grade teacher who provided him with resource specialist program (RSP) services, Pamela Martens, who has been Student's speech language pathologist since he was enrolled at his NPS, and Mother all credibly testified to Student's unique needs. Student's specific learning disability affects his ability to comprehend what he is reading. He has difficulty processing what he is reading, does not understand subtleties, and requires visual cues to understand written material and to learn and understand vocabulary words. Although he is an excellent writer, Student has great difficulty with abstract, figurative, and idiomatic language concepts. While he is good at mathematical equations, his processing deficits also affect Student's ability to understand word problems. Student's reading deficits impact his ability to comprehend grade-level text books. One-on-one assistance with reading of textbooks and school reading material significantly improve Student's ability to comprehend what he was reading.

8. Student also has a diagnosis of attention deficit disorder (ADD), for which he takes medication. The ADD contributes to Student's difficulties in attending, hearing, processing, and understanding, particularly oral instructions. A hearing loss in his left ear compounds these difficulties for Student. He also has sensory issues (for example, he does not like touching newspaper), motor skills deficits, and exhibits symptoms of obsessive

³ According to middle school RSP teacher Allison Sullivan, speech language pathologist Pamela Martens, and Mother, pre-teaching consisted of review of materials, in particular works of literature, before Student's teacher taught the material in class. Post-teaching consisted of review of materials after the teacher presented them to the class. Supplemental teaching included discussions beyond what the teacher had specifically taught in class.

⁴ As described by Ms. Martens, who has been Student's speech language pathologist since he was in sixth grade, verbalization and visualization is a learning technique developed by the Lindamood Bell institute. The program is supposed to help students who have weak concept imagery, language problems, following directions, etc. The students are taught how to create images through the structure of words. It is a gradual progression from a small unit to a whole page, or a gestalt. The ultimate purpose is for the students to implement strategies for themselves. Verbalization and visualization is also known colloquially as "V & V."

compulsive disorder (for example, Student dislikes messy paper and does not tolerate erasure residue).

9. Additionally, Student suffers from extreme anxiety and depression, for which he also takes medication. He has very little social skills, believes, without reason, that he is “stupid,” and has an excessive fear of having his peers identify him as a special education Student.⁵ Student is uncomfortable in large groups, and does not know how to “fit in” with his peers. When stressed, Student’s anxiety increases to a point that it interferes with his ability to concentrate on his schoolwork.

10. During sixth grade and in the summer following sixth grade, Student took several standardized tests. His NPS and outside assessors administered some of the tests. The results of the tests indicated that Student had extreme strengths in written language expression and mathematics (scoring many years beyond grade level in some instances) but also had significant deficits in comprehension subsets of the testing. For example, testing by the Lindamood Bell Institute indicated that Student was three years below grade level on the comprehension subtest of the Gray Oral Reading Test – IV. On the Test of Language Competence, Expanded Edition, Level 2, administered by a former speech language pathologist of Student’s, Student scored lower than the 10th percentile in five out of seven subtests. On the Test of Pragmatic Language, Student scored in the 12th percentile. The District does not dispute the accuracy of any of these tests.

The Eighth Grade IEP

11. Student’s IEP team, including Mother, met on October 5 and October 11, 2006, to develop the IEP that would carry him through eighth grade and into ninth grade at high school. The first day was for Student’s annual IEP review, the second for his triennial review. The entire process was collaboration between Mother, Student’s teachers, and other District personnel at the middle school. Prior to the meeting, the middle school staff permitted Mother to visit a number of classrooms so that Mother could determine if a particular teacher’s style of instruction either would be beneficial for Student or would hinder his learning. Mother also met with other IEP team members before the meeting to discuss possible elective choices for Student, based upon his abilities and interests.

12. The IEP correctly identified that Student continued to exhibit attention deficits, language and auditory processing delays, and a hearing loss. The IEP further notes that Student is successful in the general education setting when he receives accommodations and modifications in that setting, and receives multi-sensory instruction.

⁵ Student’s fear of identification as a special education student is so great that he refuses occupational therapy (OT) services, which is an area of need, because there is a glass door to the OT classroom, permitting anyone walking by to see into the room and potentially view Student receiving the services.

13. The IEP team developed 11 goals for Student. Goal 1 is a self-advocacy goal designed by the team to foster Student's independence and to assist him in being able to acknowledge to his teachers his right to accommodations when necessary. The goal recognizes Student's anxiety regarding being identified as a student with an IEP and his refusal to do or say anything that would cause him to be identified as a special education student or otherwise singled out.

14. The team developed four goals to address Student's deficits in the area of reading comprehension. The team specifically wrote the goals in accord with the eighth grade curriculum. The first reading goal identifies Student's inability to recognize the subtleties in literature, and to connect what he is reading to other contexts, or to his own life, and seeks to enhance Student's ability to identify and analyze recurring themes in literature and texts and to connect them to other contexts and his own life. The second reading goal seeks to increase Student's ability to identify and analyze from someone else's perspective an author's mood, tone, and purpose for writing in order to make abstract, deep, or extended connections to what Student is reading. The third reading goal seeks to augment Student's ability to identify and analyze figurative and literal meanings in words and written passages. The final reading goal seeks to increase Student's ability to analyze the interaction between story characters, the relationship and conflicts between characters, and the motivation of characters, and how such features affect the plot of a story.

15. To address Student's organizational deficits, the IEP contains a note-taking goal that has as its objective teaching Student to compose notes by retrieving important information from lectures or assigned reading for the purpose of review and study.

16. The team developed three language processing and production goals for Student. The first addresses Student's inability to understand slang, ambiguous statements, and idiomatic language. The second addresses Student's difficulty with the retention and recall of abstract vocabulary. The third goal focuses on enhancing Student's ability to understand and use figurative language. The team determined that visualization and verbalization strategies, as well as reference to personal experiences, assist Student to understand abstract terms.

17. The team also developed a sensory modulation goal for Student.

18. The team reviewed Student's present levels of performance and progress on his previous goals and objectives. Mother prepared the description of Student's present levels in collaboration with other IEP team members.

19. In order to achieve his goals and objectives, and access his education, Student's IEP team determined that he would be successful in the general education environment with accommodations. These included multi-sensory teaching strategies, including the use of visualization and verbalization methodologies, allowing Student access

to a computer and a laptop computer,⁶ and accommodation on tests, including extended testing sessions, breaks during the tests, use of a computer to take tests, and testing in a small group environment. The team also determined that in order to comprehend and be successful with general education materials, Student required one-on-one and small group instruction by a trained special education educator.

20. The IEP team specified other accommodations for Student in the attachment to the eighth grade IEP entitled “Present Levels.” These accommodations consisted of written instructions and assignments sent home by Student’s teachers, posted on the middle school’s internet web site, or sent by email to Mother, and confirmation of oral instructions to address Student’s ADD and auditory processing disorder. The accommodations included preferential seating in class to compensate for Student’s hearing loss. To address Student’s reading comprehension deficits, the IEP includes an accommodation for Student to receive lists of vocabulary words sent home and an accommodation that directs Student’s teacher to use visualization strategies to teach new vocabulary to Student. Other accommodations include use of a computer at school, permitting Student to tape record his classes, and provision to Student of large graph paper for his mathematics class. Finally, the IEP attachment specifies that Student receive pre-teaching, post-teaching, and supplemental teaching through either a special education teacher, general education teacher, or Student’s speech language pathologist, with the teaching to take place during Student’s study skills class at the Academy. The IEP specifies that Student would receive after-school instruction if the amount of support he needed could not be met during his study skills class.

21. Additional accommodations include the provision to Student of study guides in advance of humanities and science tests, and the provision of clean class notes if Student’s teachers determined that his own notes were incomplete or inadequate. This accommodation required Student’s teachers to monitor his note taking and prompt him to take notes. The IEP also directs Student’s teachers to provide copies of tests after they are taken for purposes of post-teaching strategies.

22. Finally, Student’s IEP accommodations address his sensory issues by providing that he not be required to use glue, touch hard copies of newspapers, or have to touch messy items in science class unless he, and the rest of his class, is permitted to use gloves.

23. The IEP team also determined that Student required several related services in order for him to access his education.⁷ Because the District’s computerized IEP software does not permit substantive changes in the drop down boxes, RSP teacher Allison Sullivan created an attachment to the IEP where the team listed the services the District was going to

⁶ Permitting Student to use a laptop computer was not at issue as the middle school had a specific program that allowed any participating student to use a laptop at school.

⁷ The term used under California statute for related services is *designated instruction and services* or “DIS.” (Ed. Code, § 56363, subd. (a).) The ALJ uses the terms interchangeably in this Decision.

provide to Student. The team determined that Student required 105 minutes a week of speech and language services, in both individual and group settings and occupational therapy consultation between the occupational therapist and Student's teachers. The team further determined that Student required two 50-minute sessions a month of psychological counseling to be provided by the Coronado Counseling Center (CCC), with which the District would contract for services, in order to address Student's anxiety, self-esteem issues, and stress. The District ultimately selected Dr. Eileen Callahan from the CCC to provide counseling services to Student.

24. Importantly, the services the IEP deemed necessary for Student also included one session a day with the RSP teacher for 30 to 45 minutes where Student would receive pre-teaching, post-teaching, and supplemental teaching of concepts covered in his general education classes, and instruction by the RSP teacher and speech language pathologist (SLP) using visualization and verbalization strategies.

25. Participants at the eighth grade IEP meetings who testified at hearing were Mother, SLP Pamela Martens, RSP teacher Allison Sullivan, and Director of Pupil Services Bruce Cochrane. All agreed that one of the significant issues at these meetings was the fact that it might be difficult, if not impossible, to implement the IEP at Coronado High School. Although part of the same school district, unlike the middle school, the high school's "Academy" was structured differently than that of the middle school. Students attending the Academy there were not co-taught by special education and general education teachers and did not generally mainstream significantly into general education classes. Notably, the RSP program at the high school was not based on an individual teaching model. Rather than have a caseload of 12 students, as did the middle school RSP teacher, the RSP teacher at the high school had a caseload of approximately 28 students, which did not permit her time to give individual instruction to any of her students. Further, the RSP classroom was not designed to foster individual instruction. Rather, students used the time as a study skills class and to ask questions of the RSP when they had doubts or concerns about assignments. Additionally, there were a number of accommodations listed in Student's IEP that were not offered at the high school. For example, the high school teachers did not generally provide study guides, and the high school had not instituted a computer laptop program, which would permit students other than those who had an IEP to use a computer in class.

26. The IEP team, and specifically Mr. Cochrane, recognized that the District had less than a year to address how it would implement Student's IEP. The IEP therefore specified that IEP transition meetings would take place in the spring of 2007, and would include District staff from the high school, so that the team could address implementation issues given the fact that Student's IEP did not coincide with any existing high school program.

27. The team held the first transition meeting on March 27, 2007. Although the primary purpose of the meeting was for the team to determine Student's classes for ninth grade and to develop accommodations that the District would implement for Student at the

high school, no one who worked at the high school attended the meeting. Attendees were Mother, Mr. Cochrane, and RSP teacher Allison Sullivan.

28. The accommodations for high school that the IEP team developed at the March 27, 2007 meeting consisted of the following:

- Preferential seating close to the teacher
- Written instruction for all projects and grading rubrics
- Daily assignments posted in the class or on the teacher's school internet web site
- Repetition and review of oral instructions
- Repetition and review of comments that Student may not have heard
- Advance provision of vocabulary words that would be part of class tests
- Use of a computer in the classroom
- Note taking for lectures and group discussions
- Study guides sent home or posted on the teacher's school internet site
- Use of large graph paper for math
- Pre-teaching, post-teaching, and supplemental teaching of academic subjects by the study skills teacher (RSP teacher) as needed upon request of Student, Mother, or a general education teacher, to take place during the study skills class or after school
- Permission not to have to touch newsprint and access to internet news sources in lieu of newspapers
- Gloves provided to all students in classes if experiments or assignments required touching "messy" items like glue
- Provision of study guides for science, history, health, English, and physical education tests
- Testing accommodations including extended time, breaks, administration of tests in a small group setting, completion of tests in study skills class
- Access to a "safe haven" such as the library or RSP classroom during lunch and class breaks
- Facilitation of social interaction in forming groups for projects in general education classes
- Visual or physical cues to refocus Student when needed.

29. As part of Student's transition from middle school to high school, the District arranged for Mother to visit a number of potential ninth grade classes for Student. Although District policy restricted parent visits to two class visits a semester, the District permitted Mother to visit 10 classes over two days. Student's middle school IEP team then selected his classes and teachers for ninth grade. The team specified that it would hold another transition meeting in June, to include Student's high school case manager, to finalize Student's transition to and plan for high school. The team agreed that Ms. Sullivan would meet with the CHS case manager prior to the June meeting to discuss the supports Student would need in high school to be successful.

30. On April 20, 2007, prior to the June transition meeting, Student's middle school held an additional addendum IEP to address the fact that two boys at school were

bullying Student. Student had failed to disclose the bullying to anyone other than his psychologist, Dr. Callahan, for weeks; he finally admitted it to Mother after much urging from Dr. Callahan. Student demonstrated numerous signs of anxiety and stress from the bullying. He started being consistently tardy for his first period, one of the classes in which he was experiencing the bullying. He was not able to focus in classes and for his speech services, his grades declined, he forgot to do assignments, and began exhibiting aggressive behavior toward his younger brother where no such aggression had previously existed. The IEP team developed a plan to handle the bullying within the classes where it was occurring without the necessity of a formal investigation. The team also determined that the SLP would defer work on Student's speech/language goals and focus on assisting Student with role-playing to teach him how to respond appropriately to the bullying. Krystal Perrin, who was then Student's middle school counselor, was involved with the IEP team in developing the plan to respond to the bullying. The intervention was successful in that Student's anxiety concerning the bullying incidents decreased and he was able successfully to finish eighth grade without further incident. This incident of bullying is significant because, as will be discussed below, Student chose to first confide in his psychologist rather than in Mother or in his teachers, emphasizing his confidence in and reliance on Dr. Callahan. Additionally, the two boys who bullied Student also began CHS at the same time as he and later affected his education there.

31. A final IEP transition meeting took place on June 7, 2007. In attendance were Mother, Ms. Martens, Ms. Sullivan, Mr. Cochrane, a District school counselor named Krystal Perrin (who did not testify at hearing) and high school RSP teacher Rebecca Black. In addition, present for part of the meeting, although he did not stay to the end of the meeting and therefore did not sign in on the IEP document, was the high school Principal, Karl Mueller. Mr. Cochrane had specifically invited Principal Mueller so that Mr. Mueller would be aware of Student's unique needs and the fact that the high school could not presently implement his IEP.

32. Ms. Sullivan wrote a detailed description of the services she provided to Student and distributed the description to the IEP team members. Ms. Sullivan had also visited the high school and met with Ms. Black; she detailed her visit at the IEP meeting. The team members then began a discussion of how the high school was going to implement Student's IEP given the differences in the educational structure between the high school and the middle school.

33. As Ms. Black acknowledged at hearing, her RSP classroom followed a study skills model that emphasized independent study. The primary purpose of her class was to impart study skills to students who had deficits in that area. Students would attend her class for a designated school period, do homework, ask for help as needed, and receive study skills instruction from her. If a student needed accommodations for taking tests, he or she could take the tests in Ms. Black's classroom, which had far fewer students in attendance at a given time than did a general education classroom. Therefore, one of Ms. Black's many duties included monitoring students during test taking. She also provided instruction in organizational skills, checked the students' agendas for assignments, and offered assistance

with homework, none of which were areas of need for Student, and none of which therefore were included as accommodations on his IEP. Ms. Black did not give individual instruction to her RSP students; she simply did not have the time to do so.

34. At the June 7, 2007 transition meeting, both the middle school team members and high school team members acknowledged that Student's IEP required that he receive individualized teaching, including pre-teaching, post-teaching, and supplemental teaching. All members also acknowledged that the high school did not have the staff or the educational structure to provide Student with those services. Notably, Ms. Black stated that she could not implement Student's IEP under the present structure of her RSP classes and given her caseload of some 28 students.

35. Ultimately, Mr. Cochrane, although he had already accepted another position and would soon be leaving the District, agreed that the District would need to hire another special education teacher to staff the RSP room. Mr. Cochrane felt that increased staffing needs at the high school for special education students would justify the hire of an additional teacher who would work at least part time in Ms. Black's RSP classroom. The team anticipated that the additional teacher would co-teach with Ms. Black, significantly diminishing Ms. Black's workload, and therefore permit her to provide Student with the individualized teaching required by his IEP.

36. Although the IEP team members present at the June 7 meeting recognized and acknowledged that Ms. Black could not implement Student's IEP and that certain of Student's accommodations were not presently available at CHS, no one on the team, including those from CHS, suggested modifying Student's placement or accommodations. No one suggested discussing alternative placements, services, or accommodations. Nor did anyone suggest at that time that Student did not require any of the placement or services indicated in his IEP in order to benefit from his education or that his needs had changed since the development of his October 2006 IEP. Mr. Cochrane credibly testified, as did Ms. Sullivan, Ms. Martens, and Mother that the IEP team agreed at this meeting that Student would need the same type of supports and accommodations at high school that he had been receiving in middle school.

37. When the June 7, 2007 IEP team meeting ended, all members understood that Student's general education teachers would have to implement the accommodations listed in his IEP even if they did not presently do so with other children, and that a new RSP teacher was needed to assist Ms. Black so that she could provide him with one-on-one teaching. However, the District never placed another teacher in Ms. Black's RSP room or modified her caseload.

Failure to Implement Student's IEP

38. A student with exceptional needs is legally entitled to a free appropriate public education that addresses those needs. Under state and federal law and federal precedent, one of the factors used in determining whether a school district provided a FAPE to a student is

whether the services it provided to the student conformed to his or her IEP. A failure to implement any provision of the IEP violates a student's right to a FAPE where the failure has been determined to be material. A student does not have to demonstrate that he or she suffered educational harm in order to prevail on a claim that a district failed to implement his or her IEP.

39. At the due process hearing and in its closing brief, the District admitted that it failed to implement significant portions of Student's October 2006 IEP. The District failed to provide Student with individual and small group pre-teaching, post-teaching, and supplemental teaching. It also failed to provide Student with the study guides mandated in his IEP. It further failed to use visualization and verbalization methodologies in Student's RSP class since Ms. Black had never received training in that methodology. The District also failed to provide Student with the 105 minutes per week of speech/language services identified in his IEP; Ms. Marten, Student's SLP, initially provided only 75 minutes a week of services, and had to cancel some sessions, which were never re-scheduled. The District did not provide Student with written assignments and instructions in many of his classes, and the District did not inform Student's classroom teachers that they needed to ensure that he understood oral instructions. Finally, the District never informed Student's teachers that social facilitation for group projects was an accommodation in Student's IEP. The teachers were therefore unaware that they needed to assist Student with social facilitation.

40. The primary intervention developed by Student's IEP team to address his reading, comprehension, and processing deficits (which form the core of Student's specific learning disability) was through pre-teaching, post-teaching, and supplemental teaching of his academic subjects using the V & V method. The District's failure to provide any of these teaching supports, and its failure to provide Student with any individual instruction meant that the District was not implementing the core component of Student's IEP. The provision of study guides, written instructions, and confirmation of oral instructions, were all designed to address Student's ADD and his learning deficits. That Student required these intense interventions was underscored by the fact that even with the supports in middle school, he did not meet all his goals and objectives by June 2007. According to Ms. Sullivan, Student had not met his final benchmarks on three of the four reading goals in his eighth grade IEP.

41. In order to compensate for the District's failure to implement his IEP, Mother hired a biology tutor and an English tutor to provide him with the pre-teaching, post-teaching and supplemental teaching that he was not receiving at school. Mother, who has a bachelor's degree, a law degree, and is certified as a long-term substitute, also spent almost 87 hours (by the time of the due process hearing) providing pre-teaching, post-teaching and supplemental teaching to Student. Student provided evidence, through his testimony, that of Mother, and that of Ms. Sullivan and Ms. Marten, that he would not have been able to pass components of his classes had he not received the tutoring provided by his mother and the contracted tutors. The District provided no evidence to challenge that provided by Student.

42. Additionally, as elaborated below, the District's failure to implement Student's IEP resulted in a significant increase in Student's level of anxiety. He reverted to self-stimulatory behavior that he had not engaged in for many years, he became forgetful and unfocused, and he began having "meltdowns" at home. Student's anxiety was so great that he was unable to participate in his speech/language sessions, using the time with Ms. Martens instead as extra counseling sessions to discuss his stress and anxiety. Student therefore was unable to progress in his speech/language goals during the fall semester of 2007 since most of the work that Ms. Martens was supposed to do with Student was deferred until his anxiety could be addressed.

43. The testimony from Student, Mother, Ms. Martens, Ms. Black, and teachers Davin Heaphy and Brad Couture support Student's contention that the District failed to implement the majority of services and accommodations in his IEP. The only portions of the IEP implemented by the District were preferential class seating, testing accommodations, some advance provision of vocabulary words, occasional use of a classroom computer, occasional note-taking assistance, the use of large graph paper in math class, some acknowledgment of Student's dislike of touching "messy" things, and two-thirds of the speech/language services mandated by the IEP. The District also provided the psychological counseling sessions as mandated. The District failed to implement the remainder of the IEP.⁸

44. Testimony at hearing from Student and Ms. Black support Student's contention that in spite of a stay put order issued by OAH on December 20, 2007, except for reinstating Student's full speech/language services, the District did not attempt fully to implement the IEP until the due process hearing. Testimony and documentary evidence at hearing also established that the failure by the District to implement the pre-teaching, post-teaching and supplemental strategies indicated in the IEP, as well as the failure to provide study guides and/or confirmation of oral instructions, resulted in Student's failing, or nearly failing, portions of tests. For example, Student failed a test on Jewish history and culture because he did not hear (or process) the instructions for the test and therefore did not give enough answers as required although he knew the material. Likewise, while Student continued to excel on essay portions of tests, where he had been pre-taught the material, he failed those sections of English exams where vocabulary had not been pre-taught to him or where a work of literature had not been pre-taught. These examples demonstrate that the failure to implement significant portions of Student's IEP affected his ability to understand the material being taught and understand the response his teachers were looking for on tests.

45. In failing to provide Student with the core components of his IEP that addressed his specific learning disability, the District materially failed to implement Student's IEP. The failure to implement the identified portions of his IEP therefore denied Student a FAPE.

⁸ Neither party addressed whether the District implemented the occupational therapy consultation portions of Student's IEP.

The October 2007 IEP

Predetermination to Eliminate Pre-Teaching, Post-Teaching, Supplemental Teaching and V & V

46. Student contends that the District decided prior to the October 2007 IEP meetings not to offer him the specialized instruction mandated by his October 2006 IEP, to wit, pre-teaching, post-teaching, and supplemental teaching using the V & V methodology. The District asserts that it did not predetermine its offer and entered into the IEP process willing to consider all suitable placements, accommodations and services.

47. A school district must comply both procedurally and substantively with the IDEA. A school district may commit a procedural violation of the IDEA if it comes to an IEP meeting without an open mind and several options to offer for discussion with all team members, or refuses to consider the input of a student's parents or other relevant data his parents may have. A district fulfills its obligation in this regard if it does suggest different potential placements, and discusses and considers any suggestions and/or concerns a parent has concerning the child's placement. However, participation by the parents must not be mere form over substance; participation in the IEP process must be meaningful.

48. Student placed hundreds of emails in evidence during the hearing. They cover the period from summer 2007 up to approximately March 2008. A common thread of many of the emails between District personnel, including Ms. Black, Mr. Mueller, Mr. Erhard, and Ms. Martens, and between Mother and District personnel, was the inability of Ms. Black and the high school to implement Student's IEP. It is clear from emails between Richard Erhard, who the District hired as Director of Pupil Services to replace Bruce Cochrane, and Ms. Black, that the high school was astounded that the middle school, and Mr. Cochrane, had agreed to such a detailed IEP. In an email dated August 24, 2007, Ms. Black wrote to Mr. Erhard concerning Student's IEP "Have you had a chance to look at this IEP? When I see this list of accommodations, I see "set up for failure" all over them I just don't see the high school teachers, providing all the things that are listed and I don't have time on a daily basis to run around and get all this stuff. It's crazy."

49. In his reply email of the same date to Ms. Black's August 24, 2007 email, Mr. Erhard does not discuss how the high school staff could implement the IEP or what alternatives he or other staff could propose to address the components of the IEP that the school believed it could not implement. Instead, Mr. Erhard first questioned the validity of Student's IEP based upon the fact that no one from the high school attended the March 27, 2007 transition meeting and based upon the fact that not all statutorily required IEP team members were present at the meeting. Mr. Erhard then directed Ms. Black to attend her meeting with Mother, as had been previously arranged, to discuss possible changes to Student's IEP. If Mother was "reasonable" and Ms. Black was successful in convincing her that changes were appropriate, Mr. Erhard suggested that Ms. Black say to Mother "I would suggest that we now calendar an IEP meeting to formalize the changes to the IEP that we

would both like to see.” Mr. Erhard concluded his email by stating that if this approach with Mother did not work, the high school was “stuck with the IEP up until the point in time that we convene an IEP to recommend the changes we would like to see.”

50. Both the content and tone of the emails between Mother and District staff, and among District staff itself, indicate that the District was exasperated with Mother. The District, in particular Mr. Mueller and Mr. Erhard, believed that Mother had been directing Student’s IEP process and that Mr. Cochrane, and therefore the District, had capitulated to her every whim because she was an attorney. They believed that Student’s IEP was overly detailed and gave him more than to what he was legally entitled. Mother’s constant communications with the District contributed to the District’s frustration.

51. The District IEP team members held a few staff meetings amongst themselves prior to the first IEP meeting scheduled for October 8, 2007. There is nothing problematic about their having done so; district staffs often meet to discuss the results of assessments and possible placements for a student. However, in this case, there is no evidence that District staff discussed how to implement Student’s IEP, if his needs had changed, or possible alternative means of addressing his learning disability.

52. A review of the transcripts of the first three IEP meetings held to develop the October 2007 IEP (Mother was not present at the last) confirms that the District did not enter the IEP process with an open mind concerning what type of specialized instruction would support Student in accessing his curriculum. There simply was no discussion of why the previous IEP had mandated pre-teaching, post-teaching and supplemental teaching and what changes, if any, had occurred to suggest that Student no longer required that type of instruction. The District staff, in particular Mr. Mueller, steadfastly insisted that the fact Student was maintaining good grades indicated that he did not need the specialized teaching indicated in his prior IEPs. The District personnel brushed aside Mother’s assertions that Student had only been able to maintain his grades due to her intensive intervention and due to the private tutors she had hired for him. The District also gave short shrift to Mother’s attempt to discuss the benefits to Student of V & V.

53. Significantly, the District did not offer any options for consideration by the IEP team regarding what alternative specialized instruction or methodologies the team might want to discuss as alternatives to the pre-teaching, post-teaching, and supplemental teaching using V & V, as urged by Mother. The District had already admitted, at least in emails amongst its staff, that it could not implement the IEP as written. However, no District team member suggested discussing the continuum of placement options for Student. No one broached whether Student should return to a NPS if the District could not address his needs, and no one offered any alternative types of specialized instruction or alternative methodologies that could possibly address Student’s learning disability. The only option offered was placement in Ms. Black’s RSP room, a classroom designed for independent study and to teach Student study skills, neither of which addressed his learning disability.

54. The weight of the evidence therefore supports Student's contention that the District predetermined the specialized instruction that it would offer to Student and that it was unwilling to consider other alternatives. The predetermination of services impeded the ability of Mother to participate fully in the IEP process and therefore denied Student a FAPE.

Predetermination of Counseling Services/Prior Written Notice/Failure to Consider Recommendation of Expert

55. Student has received some type of psychological counseling services as part of his IEP since fourth grade. Although Student initially received some group counseling services after he began attending Coronado Middle School, his IEP determined in October 2006 at his eighth grade IEP that Student required more intensive, individual therapy from a licensed clinical psychologist. The District determined that it could not offer the type of services Student needed through its own staff. The District therefore contracted with the Coronado Counseling Center, a private psychological counseling group, to provide the services to Student. Dr. Eileen Callahan, a licensed clinical psychologist with a doctorate degree in psychology, was selected as Student's therapist. Student's eighth grade IEP provided him with two 50-minute counseling sessions a month.

56. Student developed an exceptional rapport with Dr. Callahan. An illustration of the extent of that rapport is the fact that Student confided in Dr. Callahan that he was being bullied during the second semester of eighth grade weeks before he was able to discuss the incidents with Mother or even with Ms. Martens, in whom Student also has great confidence. It was at Dr. Callahan's urging that Student finally disclosed to Mother what was happening at school and why his behavior (as discussed in paragraph 30 above) had changed so drastically at home and at school.

57. Soon after starting ninth grade at Coronado High School, Student began experiencing an increase in anxiety and in his levels of stress, due to the lack of implementation of his IEP. He began having what Mother termed "meltdowns" at home. He began isolating himself in his bedroom. He was not able to focus on task completion and often did not begin homework until 10 p.m. Student recommenced engaging in self-stimulating activities, such as spinning in a chair, and requiring sensory input, such as using a piece of rough material, things he had not required since he was a young child. Mother again began using sensory interventions, such as deep pressure, something that she had not done since Student was two.

58. Dr. Callahan credibly testified that Student confided in her that his stress at this time was based on his fear that he was not going to do well in school without the supports he had received in middle school. Student was worried about the conflict and strain at school; he was well aware that his Mother was attempting to get the high school to implement his IEP but was not receiving responses to her concerns. Based upon Student's level of stress, the fact that Dr. Callahan observed the effect Student's anxiety was having on his grades, and the fact that discussion about his anxiety over his school program was

consuming so much of her sessions with Student, Mother independently contracted with Dr. Callahan for extra counseling sessions for Student.

59. No one from the District, including any school counselors or school psychologists, contacted Dr. Callahan concerning Student's progress in counseling in anticipation of his upcoming IEP. Nor did anyone invite Dr. Callahan to the meetings the IEP team held to develop Student's October 2007 IEP. Therefore, upon request by Mother, Dr. Callahan prepared a letter detailing her recommendations for Student. Since she had been spending too much time addressing Student's crisis issues rather than his core mental health issues, Dr. Callahan recommended that Student's counseling sessions be increased from twice a month to three times a month.

60. The IEP team did not reach the issue of counseling at the first two IEP meetings the team held to develop Student's October 2007 IEP. Therefore, neither the need for counseling, the type of counseling, the provider of the counseling, nor the amount of counseling was touched upon at those first two meetings. However, on November 13, 2007, two days before the third scheduled IEP team meeting, Ms. Black wrote an email to Mr. Erhard in which she stated, inter alia, "I'm also assuming that we are no longer going to pay for private counseling, so we are not going to offer that in this IEP. Do we offer DIS counseling on campus?"

61. Mr. Erhard replied to Ms. Black's email on November 14, 2007. He correctly noted that if a student had a need for a service, the District had to address it, and provide the service if indicated. Mr. Erhard also correctly noted that the question of who would provide the services, and whether the services needed to be "out-sourced" were questions for the IEP team to consider and determine. He concluded by stating that if the District did not see the need for the services and/or did not believe the lack of the services would adversely affect Student's academic performance, the District needed to document that fact.

62. Mr. Erhard, who did not generally attend any student's IEP meeting, also did not attend any of the meetings for Student, including the November 15, 2007 meeting at which Mother raised the issue of counseling services. Although Mr. Mueller had received copies of the emails, Mr. Mueller did not reference Mr. Erhard's email, or discuss or note Mr. Erhard's opinion regarding how the District should approach the question of Student's need for counseling services. Mr. Mueller refused to address directly Mother's concerns about the counseling services, such as who determined the basis for changing Student's counseling services or if such a change was warranted because the services were not necessary for Student to access his education.

63. The draft IEPS, which District staff presented to Mother at this and at the prior meetings, did not include an increase in counseling services and specifically changed the service provider from the Coronado Counseling Center (and Dr. Callahan) to the District. The counseling portion of the draft IEPS was unclear even to District staff. The initial draft reduced Student's counseling sessions to 60 minutes per week (two sessions for 30 minutes) although he was already getting two 50-minute sessions a week. When Mother asked Ms.

Black why the session time had been reduced, Ms. Black incorrectly asserted that it mirrored Student's present IEP; she had no idea that the present sessions totaled 100 minutes. Ms. Black therefore could not give any rationale for the reduction in counseling time. She ultimately agreed that the present level of counseling should have been included in the proposed IEP as well and changed the session time back to 50 minutes.

64. In response to Mother's query as to why the service provider was changed from the private counseling group to on-site District counseling, Mr. Mueller insisted that District staff could provide one-on-one counseling to Student. However, he was unwilling to address the qualifications of District staff to provide the counseling and gave no explanation as to why the District was recommending its proposed amount of counseling services. Nor was Mr. Mueller, or anyone else present at the meeting, able or willing to articulate why the District believed that Student no longer required the services of a licensed clinical psychologist, particularly in light of Dr. Callahan's recommendations.

65. Ms. Black tried to distinguish Student's present counseling services from those that the District was proposing by stating that his present services were different from what the District would offer on-site. She was unable, however, to state why Student now required a different type of services or how the services would differ, other than the fact the provider would change.

66. Notably absent from the discussion regarding counseling services was a school psychologist. No school psychologist attended the IEP meetings. No school psychologist contacted Dr. Callahan to discuss Student's progress in counseling or his present counseling needs. No school psychologist contacted Student or Mother to discuss Student's counseling needs. In addition, no school psychologist gave any recommendation regarding Student's present needs or the basis for the District's recommendation for counseling services. The District therefore made a decision regarding counseling services for a child presently on several medications, who was receiving psychological therapy sessions from a licensed clinical psychologist, without consulting any professional qualified to make recommendations regarding Student's needs for therapy. The services offered appear to be based solely upon Mr. Mueller's determination that they were all that Student needed, even though there was no indication that Mr. Mueller was qualified to make that determination.

67. Additionally, the District was unwilling to review or consider Dr. Callahan's report at the IEP meeting, discuss her recommendations for increased services, or even incorporate her report into the IEP. Although Mr. Mueller agreed to Mother's request at the end of the November 15, 2007 meeting that the District attach Dr. Callahan's report to the final IEP so that it would become part of the document, the District failed to do so.

68. The weight of the evidence thus supports Student's contention that the District predetermined that it would no longer provide services through an outside service provider. The weight of the evidence also supports Student's contention that the District failed to consider the recommendations of Dr. Callahan, and that it failed to provide any prior written notice of its reasons for rejecting Dr. Callahan's recommendation and Mother's request that

Student's therapy be increased to three sessions a month. At the IEP meeting on November 15, 2007, Mother requested an explanation for the District's decision to cease using Dr. Callahan as Student's counseling provider, and requested an explanation as to why the District would not implement Dr. Callahan's recommendation for an additional counseling session. The District refused to give her a concrete verbal response at the meeting, did not give its reasons in the IEP document itself, and did not send any written notification to Mother after the IEP meetings concluded. By its failure to detail the reasons for its decisions with regard to Student's counseling services, the District significantly impeded Mother's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. It deprived her of the reasons why the District was making certain decisions and therefore prevented her from making a knowing and reasoned decision as to whether she should accept the services as offered by the District.

69. By significantly impeding Mother's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, the District denied Student a FAPE with regard to the October 2007 IEP.

CONCLUSIONS OF LAW

Burden of Proof

1. Student, as the petitioning party, has the burden of proving the essential elements of his claim. (*Schaeffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

Failure to Implement Student's Eighth Grade IEP (Issue 1)

2. Student contends that the District materially failed to implement his eighth grade IEP when he transitioned from middle school to high school on August 28, 2007. The District admits that it failed to implement portions of the IEP but argues in its closing brief that in spite of the District's failure, Student still received meaningful educational benefit from his education. Although the District does not specifically so state, its argument implies that the ALJ should find that the District's failure to implement fully Student's IEP does not constitute a denial of FAPE because Student did not suffer any educational harm.

3. A child with a disability has the right to a free appropriate public education (FAPE) under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004). (Ed. Code, §§ 56000, 56026; 20 U.S.C. § 1412(a)(1)(A).) FAPE is defined as special education and related services that are available to the student at no cost to the parent, that meet the state educational standards, and that conform to the student's individualized education program (IEP). (Ed. Code, § 56031; Cal. Code Regs., tit. 5 § 3001, subd. (o); 20 U.S.C. § 1401(9).) The term "related services" (designated instructional services (DIS) in California) includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (Ed. Code, § 56363; 20 U.S.C. § 1401(26).)

4. There are two parts to the legal analysis of whether a school district complied with the IDEA. The first examines whether the district has complied with the procedures set forth in the IDEA. The second examines whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefit. (*Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690] (hereafter *Rowley*)).

5. To determine whether a school district substantively offered FAPE to a student, the adequacy of the school district's proposed program must be determined. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) Under *Rowley*, and state and federal statutes, one of the standards for determining whether a district's provision of services substantively and procedurally provided a FAPE is whether the services conformed to the Student's IEP as written by his IEP team. The IDEA defines a FAPE in part as "special education and related services that . . . are provided in conformity with the [child's] individualized education program." (20 U.S.C. § 1401(a)(9).)

6. In *Rowley*, the Court found that some educational benefit had been conferred on the student since she achieved passing marks and advanced from grade to grade. (*Rowley, supra*, 458 U.S. at pp. 202-03.) However, the Court cautioned that it was not establishing any one test for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, Id.* at pp. 202, 203, fn. 25.)

7. A failure to implement a student's IEP will constitute a violation of the student's right to a FAPE if the failure was material. There is no statutory requirement that a district must perfectly adhere to an IEP and, therefore, minor implementation failures will not be deemed a denial of FAPE. A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. A party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and instead, must demonstrate that the school board or other authorities failed to implement substantial and significant provisions of the IEP. (*Van Duyn, et al. v. Baker School District 5J* (9th Cir. 2007) 502 F.3d 811, 815 (hereafter *Van Duyn*)).

8. However, the materiality test is not a requirement that prejudice be shown: "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Van Duyn, supra*, 502 F.3d at p. 822.)

9. Here, there is no question that the District did not implement portions of Student's IEP. It admitted to the failure at hearing and in its closing brief. As early as Student's IEP meeting in October 2006, when his IEP team developed Student's eighth grade IEP, which the team designed to transition Student into high school, the District was aware that it could not implement the core portion of Student's specialized instruction. The high school simply was not structured to provide individual teaching to a Student assigned to a RSP class. The District was also aware that Ms. Black, the RSP teacher, did not have

training in V & V and therefore would not be able to implement that methodology of learning with Student. The District was also aware that many of the accommodations listed in Student's IEP, such as receipt of study guides, written instructions, and computer use in the general education environment were accommodations that the general education teachers would readily accept. Additionally, although it does not appear that the District knew in advance that it would not be able to provide Student with the amount of speech and language services specified on his IEP, when Student began high school at the end of August 2007, his SLP did not have the time to provide him with his full services. Rather than provide the 105 minutes a week mandated by the IEP, Ms. Martens was only able to provide 75 minutes a week to Student. She sometimes had scheduling conflicts and had to cancel sessions, which Student has not been given an opportunity to make up.

10. The weight of the evidence supports Student's contention that the District's implementation failure was material. Student's primary disability that the District addressed through specialized instruction in a non-general education class was his learning disability. The only specialized instruction Student's IEP mandated was the pre-teaching, post-teaching and supplemental teaching provided to him for 30 to 45 minutes a day in the RSP room, using the V & V method. All other strategies to address Student's reading and comprehension difficulties were accommodations that could be implemented in the general education environment. The lack of supports for Student as soon as he began high school contributed to a marked increase in his anxiety and stress as well as in his inability to pass portions of his tests. The decrease in speech language therapy amounted to a third of the original amount provided to Student. The District's failure to provide all these services and accommodations was therefore a material failure to implement substantial portions of Student's IEP.

11. The District's argument that it should be relieved of liability because Student made progress in school is unpersuasive. First, as discussed above, *Van Duyn* instructs that a child does not have to suffer a demonstrable harm in order to sustain his burden of proof that he was denied services mandated by his IEP. Second, as discussed in paragraphs 9 and 10 above, Student's evidence supports his contention that his educational progress was affected by the District's implementation failure. Therefore, Student has sustained his burden that the District denied him a FAPE when it materially failed to implement portions of his IEP. (Factual Findings 11 - 45.)

Predetermination of Placement and Services (Issues 2 and 3)

12. Student contends that the District predetermined its decision to discontinue offering individual teaching to Student in the form of pre-teaching, post-teaching, and supplemental teaching, which had been the core of Student's eighth grade IEP, and which the District never was able or willing to implement at its high school. Student also contends that the District predetermined that it would change the provider of Student's counseling services, as well as the amount and location of the services. Student further asserts that the District failed to consider the recommendations of his counseling service provider. Student contends that the District's predetermination of these issues denied Mother an opportunity to be an

equal participant in the IEP process and therefore denied Student a FAPE. The District maintains that neither Director of Pupil Services Richard Erhard nor any other District staff member directed the contours of the offers eventually memorialized in Student's October 2007 IEP, and that Student has failed to prove that the District predetermined any portions of his IEP.

13. The IDEA requires that a due process decision be based upon substantive grounds when determining whether the child received a FAPE. (Ed. Code, § 56505, subd. (f)(1).) A procedural violation therefore only requires a remedy where the procedural violation impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subds. (f)(2)(A)-(C); *Rowley, supra*, 458 U.S. at pp. 206-07; see also *Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 892. (hereafter *Amanda J.*.) Procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of parents' opportunity to participate in the IEP formulation process are insufficient to support a finding that a pupil has been denied a free and appropriate public education. (*W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483 (hereafter *Target Range*.) Procedural errors during the IEP process are subject to a harmless error analysis. (*M.L., et al., v. Federal Way Sch. Dist.* (9th Cir. 2004) 394 F.3d 634.)

14. In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but also a meaningful IEP meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools.* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].) "A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." (*Ms. S. ex rel G. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1131.) The test is whether the school district comes to the IEP meeting with an open mind and several options, and discusses and considers the parents' placement recommendations and/or concerns before the IEP team makes a final recommendation. (*Doyle v. Arlington County Sch. Bd.* (E.D. Va. 1992) 806 F.Supp. 1253, 1262 (hereafter *Doyle*.)

15. Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances where placement is determined without parental involvement in developing the IEP. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 855-859 (hereafter *Deal*); *Bd. of Educ. of Township High School Dist. No. 211 v. Lindsey Ross* (7th Cir. 2007) 486 F.3d 267, 274-275.) However, merely pre-writing proposed goals and objectives does not constitute predetermination; nor does

providing a written offer to a Student before his parents have agreed to it. (*Doyle, supra*, 806 F.Supp. at p. 1262; *Deal, supra*, 392 F.3d at p. 857.)

16. A school district has the right to select a program and/or service provider for a special education student, as long as the program and/or provider is able to meet the student's needs; IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D. Cal. 2007) 2007 U.S. Dist. Lexis 9135; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d 880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 47 IDELR 216.) Nor must an IEP conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education...designed according to the parent's desires."], citing *Rowley, supra*, 458 U.S. at p. 207.)

17. A student's IEP team is required to review his or her IEP at least once a year, to determine whether the annual goals for the student are being achieved, to revise the IEP, as appropriate, and to address, among other matters, information about the student, provided to, or by, the student's parents. (Ed. Code, § 56341.1, subd. (d)(3).)

Predetermination of Pre-teaching, Post-Teaching, Supplemental Teaching

18. In the instant case, the weight of the evidence supports Student's contentions that the District predetermined its decision not to offer pre-teaching, post-teaching, and supplemental teaching through V & V methodology, and that it had predetermined its decision to offer placement in Ms. Black's RSP classroom without further specialized instruction. The evidence – both the documentary evidence and testimony at hearing – is replete with references to the fact that the District could not implement these teaching strategies for Student. As discussed in Factual Findings 33 and 34, the high school staff members specifically stated that they could not implement Student's IEP. Additionally, as stated in Factual Findings 48 and 49, the emails between District staff and Mother, and among the staff themselves, indicate that Principal Mueller, RSP teacher Ms. Black, and Mr. Erhard, the new Director of Pupil Services, all believed that Student's eighth grade IEP was extraordinary. They indicated through their emails that they believed that Bruce Cochrane, Mr. Erhard's predecessor, had somehow "given away the farm" so to speak when he agreed to the extremely detailed components of the IEP. The content and tenor of the emails emphasize how frustrated District staff members were with the contents of the IEP and with Mother's constant communications concerning it. However, rather than finalize the original decision to hire another teacher to assist Ms. Black so that she would have the support, and the time, to implement Student's IEP, the District chose to simply ignore the provisions of the IEP. Significantly, the District neither discussed ways to implement the IEP nor alternatives that would address Student's needs.

19. The transcripts of Student's October 2007 IEP meetings confirm Student's assertions that the District had determined that it would not offer the individual teaching supports from Student's October 2006 IEP. Other than a consistent insistence that the

exclusion of the individual teaching was based on Student's present levels of performance (the fact that his grades were As and Bs) the District did not respond to Mother's questions as to how the decision had been made to exclude the individual teaching. There was no explanation of why Student had required a type of specialized teaching for a number of years, but suddenly no longer required it. Nor was there any recognition of the fact that Student had failed to meet all of his prior year's goals, notably those in reading comprehension. Significantly, the District failed to bring to the table more than its one offer: placement in the RSP classroom without additional specialized education to address Student's learning disability. There was no discussion of what alternative teaching methodologies could be used with Student and no discussion of alternative placements that might address his needs. The District was unable to implement Student's IEP; therefore, it did not offer the supports it had previously found were necessary for Student to access his education. Nor did the District offer Mother, or present at hearing, any support for its implied position that Student's needs had someone changed between middle school and high school. Indeed, every witness to whom Mother posed the question of whether Student's needs had changed answered in the negative. Student has therefore met his burden of proof that the District predetermined that it would not offer him pre-teaching, post-teaching and supplemental teaching, and predetermined that the only offer of placement it would make would be one period a day in an RSP classroom without any specialized instruction to address Student's learning disability. The District's predetermination of his specialized instruction impeded Mother's right to participate fully in the IEP process and therefore denied a FAPE to Student. (Factual Findings 46 – 54.)

Predetermination of Counseling Services

20. Student further alleges that the District predetermined that it was going to eliminate the provision of psychological counseling services to Student through a private provider, predetermined to change the amount, location, and provider of counseling services it offered to Student, and predetermined that it would not increase the amount of services offered as recommended by Student's psychologist. Student further asserts that the District refused to consider the recommendations made by his psychologist, Dr. Callahan, that his counseling sessions be increased and that he continues to receive counseling by a licensed clinical psychologist. Student maintains that the District therefore violated his right to a FAPE because it denied Mother the opportunity to participate equally in the IEP process. Although the District does not specifically assert that it predetermined the counseling services if offered to Student, it asserts generally that it did not violate Mother's right to equal participation in the development of Student's IEP.

21. The weight of the evidence supports Student's contention that the District predetermined the amount, provider, and location of Student's counseling services. In an email to Mr. Erhard, Ms. Black stated that she assumed that the District would not continue paying for Student's private counseling sessions and that they would not offer the private counseling in Student's new IEP. Although Mr. Erhard replied that the District had an obligation to continue to meet Student's needs regarding counseling as determined by the IEP team, he did not attend any of Student's IEP meetings, and it does not appear that the

District IEP team members in this regard considered his opinions. The draft IEP the District presented at the IEP meeting only offered Student 60 minutes of counseling a month in spite of the fact that he was then receiving 100 minutes a month in two sessions. A reading of the transcript for the IEP meetings indicates that the District had not even reviewed the counseling Student was receiving before making the offer of services. Ms. Black and Mr. Mueller insisted that Student was receiving only 60 minutes a month and were not convinced otherwise until Mother showed them the prior IEP document, which specifically indicated that Student was to receive 100 minutes a month. The District's failure to respond to Mother's questions as to why the District's offer reduced services and why it wanted to eliminate the private provider is further evidence of the District's predetermination of this portion of the IEP offer. The District offered no explanation as to how or why it decided that Student only needed 60 minutes a month of services and why it felt that Student no longer required services through a licensed clinical psychologist. There was simply no discussion of Student's present counseling needs. Significantly, it appears that the decision was made without input from a professional qualified to address Student's need for mental health services. No school psychologist attended the IEP meetings. Nor did the District IEP team members indicate that a psychologist or other qualified professional had assisted the District in determine its offer of counseling services. The District gave no explanation for why it felt that it could address Student's counseling needs through its own providers, even in response to Mother's statements that Student's needs for counseling had increased.

22. The evidence further supports Student's assertion that the District failed to consider Dr. Callahan's recommendation that his services be increased to three 50-minute sessions a month. Although she did not attend the IEP meetings, Dr. Callahan wrote a letter detailing her recommendations. Mother attempted to discuss the letter and the recommendations at the IEP meeting. The District did not discuss it. Mother attempted to discuss Student's increased needs, as confirmed by Dr. Callahan. The District cut off the discussion. Mother asked the District why it did not believe Student's services should be increased pursuant to Dr. Callahan's recommendations; the District did not offer any explanation for its failure to follow the recommendations. Finally, in spite of agreeing to attach Dr. Callahan's report to the final version of Student's IEP, the District failed to do so.

23. Student has therefore met his burden of proof that the District predetermined the contours of the counseling services it offered to Student and failed to consider Dr. Callahan's recommendations. These actions by the District impeded Mother's ability to participate fully in the IEP process, and therefore denied Student a FAPE. (Factual Findings 55, 59 – 69.)

Prior Written Notice

24. Student contends that the District failed to give him prior written notice of its decision not to follow Dr. Callahan's recommendations. The District maintains that it did not make its final determinations concerning anything regarding Student's placement and services prior to the IEP meetings, and therefore, could not give Student and Mother prior

written notice of its decisions. The District thus maintains that the IEP document constitutes prior written notice to Student and Mother as to the parameters of the District's offer.

25. A school district must provide written notice to the parents of a pupil whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the pupil, or the provision of a FAPE to the pupil. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a) (2006); Ed. Code, § 56500.4.) The notice must contain, in pertinent part, a description of the action refused by the agency and an explanation for the refusal, along with a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the refusal. The notice must also contain a description of other options that the IEP team considered, with the reasons those options were rejected, and a description of the factors relevant to the agency's refusal.

26. As discussed above, the District never responded to Mother's questions as to why it was offering the specific counseling services listed on the draft IEP, why it was changing the provider of services, and why it was not following Dr. Callahan's recommendations. Nor did the District send a written notice addressing these points either before or after the IEP meeting. Lastly, no explanation was included in the final IEP document. The District has never given any reason, written or otherwise, for its decision to change the provider of counseling services or for its decision to reject Dr. Callahan's recommendations. Student has therefore met its burden of proof that the District did not give him and Mother prior written notice of these issues, and therefore denied Student a FAPE. (Factual Findings 66 – 69.)

Issues 4 and 5

27. The ALJ has determined that the District procedurally denied Student a FAPE by predetermining portions of its offer of placement and services and by failing to give Student and his mother prior written notice of its decision regarding Student's counseling services, thereby denying Mother an opportunity to participate in the IEP process. It is therefore not necessary to reach issues 4 and 5, which allege that the District's offer of placement and services in the October 2007 IEP did not substantively offer a FAPE to Student. (*Rowley, supra*, 458 U.S. at pp. 201, 204-205; *Target Range, supra*, 960 F.2d at p. 1485, *Amanda J., supra*, 267 F.3d. at p. 895.)

Determination of Relief

28. Courts have long recognized that equitable considerations are appropriate when fashioning relief for violations of the IDEA. (*Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (hereafter *Puyallup School*), citing *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [105 S.Ct. 1996, 85 L.Ed.2d 385] (hereafter *Burlington*); *Lester H. v. K. Gilhool and the Chester Upland School District* (3d Cir. 1990) 916 F.2d 865, 872-873.) Compensatory education is an equitable remedy; it is not a contractual remedy. There is no obligation to provide day-for-day or hour-for-hour compensation. "Appropriate relief is relief designed to ensure that

the Student is appropriately educated within the meaning of the IDEA.” (*Puyallup School, supra*, 31 F.3d at p. 1497.) Relief is appropriate if it is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*) The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524 (hereafter *Reid*).

29. There is broad discretion to consider equitable factors when fashioning relief for FAPE violations. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [126 L.Ed.2d 284, 114 S.Ct. 361].) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Puyallup School, supra*, 31 F.3d at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

30. Student is entitled to relief based upon the ALJ’s finding, and the admissions of the District that the District failed to implement Student’s IEP when he started high school. At the due process hearing, the District offered to reimburse Mother for the costs she incurred self-funding Student’s tutoring and additional counseling sessions. The documentary evidence and testimony of Mother at hearing support the amounts of reimbursement requested by Mother. Mother is therefore entitled to the full amount or reimbursement she has requested: \$1,050 for biology tutoring; \$375 for English tutoring and \$260 for additional counseling sessions with Dr. Callahan.

31. Student also requests compensatory education. Student asserts that he lost 20.5 hours of speech and language services due to both the reduction in services provided by the District or because of cancelled sessions that were not rescheduled. The District does not dispute this figure. He also requests 95 hours of reading comprehension services with an outside provider to compensate him for the hours of pre-teaching, post-teaching, and supplemental teaching he lost during the time the District failed to implement his IEP.

32. Student is requesting that the District compensate him on an hour-for-hour basis for the teaching services he lost. However, as discussed in Conclusions of Law 30, there is no requirement that a district provide hour-for-hour compensation unless a student proves that he requires it to compensate for the district’s denial of FAPE. Here, Student has failed to prove that he needs 95 hours of services in order to be placed back in the position he would have been in absent the District’s failure to implement his IEP. The evidence demonstrates that Student continues to receive good grades, but that it has been his outside tutoring services and Mother’s assistance at home which have significantly contributed to his ability to do so. The ALJ therefore finds that Student is entitled to 40 hours of compensatory education of reading comprehension services from the District. The District shall provide the services either through a credentialed teacher qualified to provide reading services, or through an appropriate non-public agency. Student shall have one year from the date of the

issuance of this order to use the hours. At Mother's discretion, the hours shall be either after school or during Student's summer vacation. Student will forfeit any hours not used.

33. With regard to the lost speech and language services, there is no dispute that Student required speech and language therapy, that he continues to require it, and that 75 minutes a week does not meet his needs (in the October 2007 IEP offer, the District proposes providing Student with 90 minutes a week of speech language services). There is also no dispute that Student lost 20.5 hours of services by the District's failure to implement his IEP. The ALJ therefore shall order the District to compensate Student with the 20.5 hours of speech language services it failed to provide to him. The District shall provide the hours through either a District speech language pathologist or a non-public agency, at the District's discretion. The District shall provide the hours within the six months following the date of this Order. The District shall provide the additional hours to Student after his regular school day unless otherwise requested by Mother.

34. Finally, Student requests monetary compensation for the time Mother spent implementing his IEP. Mother is requesting compensation for 86.91 hours of services at the rate of \$40 an hour. The hourly rate Mother requests is based upon the hourly rate she pays to Student's tutors. Mother points to the fact that she is a certified substitute teacher in addition to having a bachelor's degree and a law degree, and therefore is qualified to provide tutoring services to Student. Mother contends that without her assistance, Student would not have been able to maintain his grades as he did and that therefore, just as she is entitled to reimbursement for payments made to the private tutors, she is entitled to reimbursement for her services.

35. Student cites three cases in support of his position that he alleges require a district to pay a parent a salary for educating his or her child at home. Student cites first to one case, *Bucks County Department of Mental Health/Mental Retardation v. Commonwealth of Pennsylvania* (3d Cir. 2004) 379 F.3d 61, in which a court awarded a parent monetary compensation for providing services to her child. However, the facts of that case do not apply here. In *Bucks County*, the mother received specific applied behavior analysis training in order to become a service provider for her young child after no other provider could be found. The court specifically references the paucity of service providers in the area and the fact that the child would not have received services during the time had the mother not received training to provide them herself. The court limited its holding to a situation in which "a trained service provider was not available..." (*Id.* at p. 75.) In this case, there is no question that appropriate service providers were available to provide the services that Mother herself provided. Another core distinction in *Buck County* is that the case dealt with a child under the age of three receiving early intervention services. The court spent considerable time discussing the fact that due to the child's age, it was imperative that she receive early intervention services immediately, rather than waiting for compensatory education if she won her due process case. The court distinguished situations where an older child could wait to receive compensatory services for those in the case before it, where the early intervention services to children under age three were designed to be received early because early intervention is crucial to the child's development. (*Id.* at pp. 72-73.) The facts

of *Buck County* are not applicable to the instant case as Student was 14 years old at the time the District failed to implement his IEP.

36. Student also cites to *Hurry v. Jones* (1st Cir. 1984) 734 F. 2d 879, 884, and *Barnesville v. Exempted Village Sch. Dist.* (1997) 26 IDELR 1168, in support of his request that Mother be reimbursed for her time. In both cases, either the court or a hearing officer agreed to award a parent reimbursement for time he or she spent providing services to their child which otherwise should have been provided by the respective school districts. The ALJ, however, declines to adopt the findings in those cases. First, both are old cases; *Hurry* is almost 25 years old and *Barnesville* is over 10 years old. Additionally, Student does not cite, and the ALJ has not found, any case either from California or from the Ninth Circuit, which has adopted the findings in either case. Finally, the ALJ declines to climb the “slippery slope” of parental reimbursement. Too many variables would affect a decision to reimburse a parent for providing services at home. The scope, quality, intensity, and type of services would all affect the decision. There are too many unknown variables, such as whether a parent would need to have a certain level of education, and how to address the level of competency of each parent requesting reimbursement. One of the greatest difficulties would be deciding where the parent’s duties as a parent assisting her child after school with schoolwork, as a parent should do, ends, and where the parent’s provision of reimbursable services begins. Since neither the Ninth Circuit nor any courts or hearing tribunals in California appear to have taken the position that a parent is entitled to be reimbursed for providing services to her child, the ALJ declines to do so now. Additionally, the Ninth Circuit has recently determined that a parent attorney representing her child is not entitled to attorneys fees for that representation. (*Ford v. Long Beach Unified School District* (9th Cir. 2006) 461 F.3d 1087) If a parent attorney, who is more than well qualified to represent other children with special needs is not entitled to reimbursement for her services in representing her own child, by correlation, a parent providing educational services to her own child, no matter how qualified the parent, is not entitled to reimbursement for those services. Mother’s request for reimbursement for her services is denied.

ORDER

1. Within 45 days of the date of this Order, the District shall reimburse Mother \$1,685 (calculated as \$1,050 for biology tutoring, \$375 for English tutoring, and \$260 for additional counseling sessions.)

2. The District shall continue to implement in full Student’s eighth grade IEP dated October 2006, except as to those parts of Student’s October 2007 IEP to which Mother has already agreed, until the parties agree to another IEP or until a subsequent IEP is found appropriate through a due process hearing or other legal procedure.

3. Within 45 days of this Order, the parties shall hold another IEP meeting for Student.

4. Within 45 days of this Order, the District shall begin to provide Student with 40 hours of tutoring in reading comprehension by either a credentialed teacher or a qualified non-public agency. The District shall provide the tutoring after Student's school day and/or during the summer, at Mother's discretion. Student shall have a year from the date of this order to use the hours or they shall be subject to forfeit.

5. Within 45 days of this Order, the District shall begin providing Student with 20.5 additional hours of speech language therapy. The District shall provide the additional hours in a manner so as not to interfere with Student's academic classes, unless Mother requests otherwise, and shall provide the hours over a time not to exceed six months from the date of this Order. The District may use either a District speech language pathologist or an non-public agency to provide the additional speech language hours, at the District's discretion.

6. All of Student's and Mother's other requests for relief are denied.

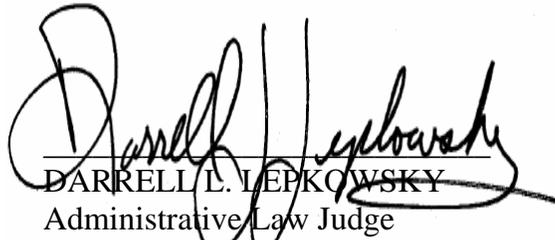
PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on issues 1, 2, and 3, the only issues heard and decided in this decision.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: May 28, 2008


DARRELL L. LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings
Special Education Division