

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2014040781

**DECISION**

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on April 15, 2014, naming Berkeley Unified School District. Student's amended complaint was filed on May 30, 2014, thereby starting over the applicable timeline, and on July 11, 2014, the matter was continued for good cause to September 16, 2014.

Administrative Law Judge Joy Redmon heard this matter in Berkeley, California, on September 16, 17, 18, 22, 23, and 24, 2014.

Attorney Nicole Hodge Amey and Mother represented Student. Father was also present on Student's behalf throughout the hearing.

Attorney Jan Tomsy represented Berkeley. Kay Altizer, Director of Special Education, Lisa Graham, and Gwen Agustin were present on Berkeley's behalf at various times through the hearing.

At the conclusion of the hearing, the matter was continued until October 20, 2014, to allow the parties to submit written closing briefs. The briefs were timely received and the matter was submitted for decision.

## ISSUES<sup>1</sup>

### *Issue No. 1*

Did Berkeley deny Student a free appropriate public education from April 15, 2012, to the present by failing to conduct an auditory processing assessment?

### *Issue No. 2*

Did Berkeley deny Student a FAPE during the 2011-2012 school year from April 15, 2012, through the 2012-2013 extended school year by:

- a. Significantly impeding Parent(s)' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or depriving Student educational benefits when it:
  - i. failed to include Parent(s) in planning for Student's transition from preschool to kindergarten; or
  - ii. failed to provide prior written notice of its decision to remove Student's one-to-one aide during the 2013 extended school year?
- b. Failing to offer and provide an individualized education program that met Student's unique needs and was reasonably calculated to provide educational benefit by:
  - i. failing to develop a plan to support Student's transition from preschool to kindergarten;
  - ii. failing to have adequate goals and/or services in the areas of academics, speech and language, behavior, and mental health; or

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<sup>1</sup> The issues have been reordered by school year and reworded to facilitate analysis. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) During the prehearing conference Student also asserted an issue regarding Berkeley's failure to offer compensatory services to address academic and behavioral regression after his transition to kindergarten. This ALJ determined that this was a requested remedy for an asserted denial of FAPE as opposed to an independent issue and it is analyzed as such.

- iii. failing to implement Student's IEP regarding a one-to-one aide during the 2013 extended school year?

*Issue No. 3*

Did Berkeley deny Student a FAPE during the 2013-2014 school year including the extended school year by:

- a. Significantly impeding Parent(s)' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or depriving Student educational benefits when it:
  - i. scheduled the September 19, October 7, and November 7, 2013, IEP team meetings for an hour each and thus failed to provide Mother adequate time to offer parental input;
  - ii. discontinued transportation services without providing prior written notice;
  - iii. failed to provide prior written notice when it stopped providing assistive technology supports to Student;
  - iv. failed to provide a complete copy of Student's educational records when requested in December 2013, February 2014, and March 2014;
  - v. failed to provide prior written notice of its decision to deny Parent's request for Pivotal Response Training; or
  - vi. failed to timely complete the November 5, 2013, articulation assessment?
- b. Failed to offer a program in the IEP dated September 19, 2013, that met Student's unique academic, speech and language, behavior, and mental health needs by the following:
  - i. inaccurately reporting Student's present levels of performance in his proposed IEP goals;
  - ii. failing to identify a person responsible for implementing Student's IEP goals 1-6 and 8-10;

- iii. failing to offer Pivotal Response Training; and
- iv. failing to provide Student with an assistive technology device as recommended in his preschool assessment and identified in his last agreed upon and implemented IEP?

### SUMMARY OF DECISION

Student did not establish that Berkeley committed any of the above procedural or substantive violations of the Individuals with Disabilities Education Act that resulted in a denial of FAPE. Therefore, all of Student's claims for relief are denied.

### FACTUAL FINDINGS

#### *Jurisdiction*

1. Student is a seven-year-old boy who resides with his parents within the jurisdictional boundaries of the Berkeley Unified School District. He attends second grade at Cragmont Elementary School in Berkeley. Student first became eligible for special education and related services in February 2010 due to a speech and language impairment. In September 2013, Student's primary eligibility was determined to be autism with a speech and language impairment as secondary.

*April 15, 2012, through the 2012-2013 extended school year*

#### ASSESSMENTS

2. During the spring of 2012 Student attended Berkeley's integrated preschool classroom at Franklin Preschool. In preparation for transitioning to kindergarten, the Berkeley members of Student's IEP team proposed conducting an early triennial evaluation. Mother signed the assessment plan in March 2012, conditioning her consent on receiving the names of each assessment before the tests were given. Mother's request was granted and in April 2012 Student was assessed in the areas of academic achievement, health, intellectual development, speech and language, motor development, social/emotional, and adaptive behavior.

3. Student asserts that Berkeley failed to conduct an auditory processing assessment beginning with the triennial assessment conducted in April 2012 to determine if he had needs in that area. This assertion was not supported by the evidence. Student's auditory processing ability was assessed by both school psychologist Susan McKenna and speech and language pathologist Stacey Kiefer. Ms. McKenna gave Student the Comprehensive Test of Phonological Processing but was unable to obtain standard scores because Student did not comply with test instructions necessary to report standard scores. She concluded that Student had needs in this area as he was less responsive to auditory

information based upon her classroom observations and working with Student in a testing environment. Ms. McKenna's report also indicated that test results are generally not considered "stable" until a child is approximately eight years old due to the wide range of development across skills and ability up to that age.

4. Student's auditory processing was also assessed by Ms. Kiefer using both the Preschool Language Scale-5th Edition's Item Analysis Checklist and the Montgomery Assessment of Vocabulary Acquisition. These assessments revealed that in the area of auditory comprehension, Student was functioning at the three-year fifth month level with scattered skills, again demonstrating a need in this area. Student did not present any credible evidence that these assessments and the assessors' conclusions were inaccurate, unreliable, or did not assess Student's auditory processing ability. Accordingly, it is determined that Berkeley did conduct an auditory processing assessment in April 2012.

#### STUDENT'S UNIQUE NEEDS

5. At that time, Student exhibited behaviors associated with autism that impaired his social interaction with typically developing peers. He also had profound expressive and receptive speech and language delays. Expressively, he could formulate three-to-four word phrases but the phrases were generally considered developmentally delayed and atypical as compared to his same-age peers. This combination contributed to Student's difficulty utilizing oral language for appropriate communication including understanding and following directions and socialization. Behaviorally, Student was highly distracted but able to follow classroom routines and rules with prompting. Regarding academics, Student frequently appeared not engaged with group activities at circle time but could label colors, shapes, numbers, and most letters. He had difficulty generalizing that knowledge in a classroom environment. For example, Student would not respond when asked questions like, "whose name starts with an 'A'?" even though he could identify the letter A. Student also displayed fine motor deficits that impacted his prewriting skills including tracing and holding writing utensils appropriately. An augmentative communication assessment was conducted and it was recommended that as Student transitioned to kindergarten, his IEP team should review the writing demands and consider providing both high and low technology modifications and adaptations to his educational program. The triennial assessment was comprehensive and accurately captured Student's unique needs as they existed at the end of preschool.

#### TRIENNIAL IEP

6. After the triennial assessment was completed, Berkeley convened an IEP team meeting on April 23, 2012. The purpose of the meeting was to conduct Student's annual and triennial IEP team meetings and also to develop a plan to help Student transition from preschool to kindergarten. Mother attended the meeting and was an active participant including sharing her concerns regarding Student's delayed language skills and his challenging behaviors at home.

7. The assessors shared their reports, Student's progress toward his goals, and they proposed new goals. The IEP contained 13 goals in the areas of expressive language/morphology, expressive language/pragmatics, fine motor needs addressing holding a writing utensil and tracing letters, demonstrating auditory comprehension by following verbal directions, three number sense goals for mathematics, pragmatic language goals including using phrases and action words, turn-taking, and responding to "what," "who," and "where" questions, and a vocabulary and an eye contact goal.

8. The IEP team then discussed appropriate placement options considering Student was transitioning to kindergarten. The IEP team members agreed that based on Student's needs he should be placed in a fully included kindergarten class with a highly structured general education teacher and a routinized classroom environment that would lead to predictability. Mother informed the other team members that Student was accepted at Cragmont for kindergarten. At that point, Student's IEP team decided to schedule another team meeting prior to the end of the school year and consult with the Cragmont special education teacher who would become Student's case manager the following year.

9. Student's preschool case manager contacted Janene Barnewolt, Student's anticipated case manager at Cragmont and updated her about Student and his needs. Thereafter, Ms. Barnewolt observed Student in his preschool program. She also worked with Cragmont's principal to select a kindergarten teacher who met the criteria of being structured and having a routinized classroom. They agreed that Student should be placed in Michelle Johnson's kindergarten class.

10. On May 15, 2012, a follow up IEP team meeting was held. Ms. Barnewolt attended that meeting. Ultimately, to meet Student's unique needs Berkeley offered Student the 13 goals described above, placement in Ms. Johnson's kindergarten class at Cragmont, and the following supports and services: 1) direct occupational therapy for 60 minutes per week, 2) specialized academic instruction for 150 minutes per week in a group setting, 3) speech and language services for 90 minutes per week, 4) occupational therapy consultation and collaboration for 10 hours per year, 5) transportation services, and, 6) augmentative communication consultation and collaboration services for six hours per year. No specific technology device was offered but the IEP included, "AAC for communication systems and strategies." The IEP also included several general education accommodations including using visual supports. Mother consented to the IEP.

11. It is determined that Mother meaningfully participated in developing Student's IEP for kindergarten and that the IEP addressed his unique needs in the spring of 2012. It is further determined that the IEP was also designed to help support Student's transition from preschool to kindergarten as his teacher and classroom were carefully selected. The goals and services offered were designed to meet Student's academic, speech and language, behavior, and fine motor needs because they addressed each area of deficit as identified in the comprehensive assessments. The levels of occupational therapy and assistive technology support were also sufficient to help Student access the general education curriculum. Student

did not exhibit the need for additional behavior or mental health services at that time. The IEP was reasonably calculated to provide Student educational benefit.

## 2012-2013 SCHOOL YEAR-KINDERGARTEN

*SEPTEMBER 24, 2012, IEP*

12. Student started kindergarten at Cragmont on August 29, 2012. During the first two weeks of kindergarten, Cragmont participates in a program called Gentle Beginnings. Most students are randomly placed among the different kindergarten classes and the teachers conduct informal assessments and observations of the students' pre-academic skills and behaviors. At the end of two weeks the students are then placed in their actual kindergarten class so that each group has a balanced mix of students based upon ability and behavior. Ms. Johnson is a credentialed teacher who has taught kindergarten for more than five years. She credibly testified that many students have difficulty transitioning from preschool to kindergarten because the academic, behavioral, and social demands are more rigorous. To help mitigate this risk for Student, he was preplaced in Ms. Johnson's class during the Gentle Beginnings program to avoid the need to move to another class. Despite this intervention, Student had a more difficult transition to kindergarten than expected and began to exhibit off task and avoidant behavior such as crawling under his desk, lying on the floor, running around the classroom, and refusing to participate in classroom activities.

13. Ms. Barnewolt began working with Student on a daily basis implementing his IEP from the beginning of the school year and collaborated with Ms. Johnson. They instituted a visual schedule and communication system for Student using a velcro board. Student was also provided access to a computer, an adaptive keyboard, manipulatives, and the use of Ms. Barnewolt's iPad as an incentive or reward. Student enjoyed the iPad and was motivated to use it. Despite these interventions, Student continued to struggle and began to exhibit new negative behaviors at school including what was described as "inappropriate touching" (touching his genital area over his clothes for a few seconds at a time).

14. Less than a month into the school year, on September 24, 2012, Student's IEP team met again to address the new behaviors Student was exhibiting. The IEP team was expanded to include Andrea Johnson, a Berkeley behavior specialist. During the meeting Mother expressed her concerns regarding the new negative behaviors and made several requests including that Student receive applied behavior analysis (ABA) therapy, a functional behavior assessment, and autism training for the staff working with Student. Student's IEP was revised and Student was offered a one-to-one aide, increased assistive technology strategies and an increase from six to 25 hours per year of assistive technology consultation. Additional goals were added to address on-task behavior, pre-reading, and eye-contact. An accommodation was added to provide Student with sensory breaks. Following the meeting, Mother's request for a functional behavior assessment was granted on October 3, 2012. In

response to Mother's request that individuals working with Student be trained specifically regarding working with students with autism, Berkeley replaced Ms. Johnson with Hannah Acevedo. Ms. Acevedo is a behaviorist who has a master's degree in counseling with an emphasis in ABA and a certification in autism. At that time she had nearly ten year's experience working directly with children with autism and had received advanced training on the subject. Ms. Acevedo was assigned to conduct the functional behavioral assessment. Mother consented to the assessment and the other IEP changes. Ms. Acevedo conducted the functional behavioral assessment and Maritza Montano was assigned as Student's one-to-one aide.

15. Ms. Barnewoldt, Ms. Johnson, and Ms. Acevedo all credibly testified that it would not have been possible to predict the specific behaviors that Student presented as he transitioned to kindergarten. As found above, the April 2012 IEP was appropriate at the time it was developed. Within a month of Student's transition to kindergarten and only two weeks following the Gentle Beginnings program, Berkeley conducted an IEP team meeting to address Student's emerging behaviors. Student's team made appropriate adjustments to his IEP, in particular, adding a one-to-one aide, additional goals to address off-task behavior, and offering to conduct a functional behavioral analysis by a person with extensive experience working with children with autism. It is determined that the changes to Student's IEP were designed to meet his unique needs and reasonably calculated to provide educational benefit.

*DECEMBER 10, 2012, IEP TEAM AMENDMENT MEETING*

16. On December 10, 2012, Berkeley convened an IEP team meeting to review the functional behavior assessment and a proposed behavior support plan, and also to determine if Student continued to need a one-to-one aide. Ms. Acevedo's functional behavior assessment included a records review, numerous classroom observations, and a home interview with Parents. Based upon the assessment results and considering teacher and Parent concerns, Ms. Acevedo drafted a proposed behavior support plan addressing three target behaviors, specifically off task/noncompliance, grabbing (a new behavior directed at his one-to-one aide), and inappropriate touching. Replacement behaviors were identified and the strategies to teach those behaviors were imbedded in the behavior support plan itself including, 1) developing break cards, help cards, and a more specific picture schedule, 2) training by the occupational therapist regarding sensory breaks, and, 3) pre-teaching academic content. Two additional behavior goals were added and the team decided that Student continued to need a one-to-one aide. Mother consented to the behavior support plan and IEP revisions. Mother requested frequent updates on Student's progress. Ms. Barnewoldt prepared summaries of the data collected regarding Student's behavior and emailed them to Mother weekly.

17. Ms. Acevedo credibly testified that Student did not exhibit a need for ABA therapy. At that time, despite behavioral challenges, she observed that Student's expressive language was rapidly developing and he was becoming more socially engaged with his typically developing peers. Ms. Acevedo's observations were consistent with Ms. Johnson,

Ms. Barnewolt, and Ms. Montano's observations of Student's progress at that time. Ms. Acevedo established that the challenges Student was having were behaviorally based and could be addressed appropriately using behavior intervention strategies such as those proposed in Student's behavior support plan rather than using ABA therapy. No credible evidence was presented contravening Ms. Acevedo's testimony regarding Student's behavior support plan or the fact that he did not need ABA therapy to address his unique needs. It is determined that the behavior support plan included appropriate goals, strategies, and supports to address Student's target behaviors. It is further determined that Student did not need ABA therapy and that the behavior support plan was designed to meet his unique needs and reasonably calculated to provide educational benefit. Student's IEP, with the additions described above, was designed to meet his unique needs and reasonably calculated to provide educational benefit.

*JUNE 3, 2013 IEP TEAM MEETING – EXTENDED SCHOOL YEAR AND ARTICULATION ASSESSMENT*

18. Ms. Barnewolt and Ms. Johnson were both persuasive that Student made significant progress academically, behaviorally, and socially throughout kindergarten. According to Ms. Johnson, Student had strong reading skills and met grade level standards. Ms. Montano, Student's one-to-one aide, worked very hard with Student to help him remain focused on academic work and to socially interact with his typically developing peers. By the end of the school year Student had made significant progress in both areas, including spontaneously playing with peers on the playground. Mollie Mindel had provided direct speech and language services to Student beginning in February 2013. She also observed Student on the playground and supported his social interaction with peers. Ms. Mindel established that by the end of the school year, Student continued to have speech and language needs but had made impressive social pragmatic development. In addition, Student significantly reduced the frequency of behaviors addressed in his behavior support plan.

19. Student's IEP team met on June 3, 2013, to plan for his extended school year and to discuss any modifications needed before the start of the next school year as Student's annual IEP was due approximately one month into first grade. It was agreed that even though Student made tremendous progress in kindergarten, to avoid regression, Student would continue to have a one-to-one aide during the extended school year and in first grade. Mother requested that the focus of the extended school year be on continued social development to which the team agreed. Mother also asked that the team develop an articulation goal for Student that could be worked on during the extended school year. Ms. Mindel agreed that Student likely had a need in this area but that before developing a goal she needed to conduct an articulation assessment. Ms. Mindel explained during the June IEP team meeting that given how late they were in the school year it would not be possible to conduct an assessment, draft a goal, have an IEP team meeting, and implement a goal during the extended school year that was set to begin that month. Ms. Mindel explained to the IEP team her belief that given Student's age and social focus for the extended school year, his articulation skills would likely develop significantly during that time and a fall assessment would be more appropriate. Student's IEP team, including Mother, agreed to

defer the articulation assessment to the fall. Ms. Mindel provided Parent an assessment plan and Berkeley received Mother's consent on September 18, 2013.

20. Student attended the extended school year program at the Berkeley Magnate Arts School. It was asserted in Student's complaint that no one-to-one aide was assigned to Student for the extended school year and that Berkeley failed to provide prior written notice of this decision. Mother's testimony did not support this contention. According to Mother, when she arrived on the first day a staff member was not able to tell her the name of Student's assigned one-to-one aide. Therefore, she assumed no aide was assigned. Mother did not testify to any further attempts to clarify the issue either at the school site or with Berkeley's special education department during the extended school year.

21. Lisa Graham, Berkeley's current interim director of special education, was the program supervisor responsible for assigning one-to-one aides for eligible students during the 2012-2013 extended school year. Ms. Graham credibly established that she assigned a one-to-one aide for each eligible child including Student. Thereafter, she sent an email to each school site and extended school year teacher indicating the names of students entitled to an aide and asking that, if there were any aide issues, she would be notified immediately. At no time during the extended school year did she receive notice that Student did not have a one-to-one aide from Mother, the school site, or the classroom teacher. Mother was an active participant in Student's education. She interacted frequently with Student's teachers and service providers, even asking for and receiving weekly updates regarding Student's behavior throughout the regular school year. It is not consistent with Mother's prior school interaction and level of involvement that she would not have inquired further with the site or district level staff had she believed that Student was not assigned a one-to-one aide during the extended school year. It is determined that Berkeley did not send prior written notice because it did not make a decision to remove Student's one-to-one aide during the extended school year. It is further determined that Student failed to meet his burden to establish that Berkeley did not provide him a one-to-one aide during the extended school year.

#### *2013-2014 School Year – First Grade*

22. Student started first grade in Sara Ellberg's class. The role of his case manager and specialized academic instruction teacher was transferred from Ms. Barnewolt to Sara Castille. According to Ms. Ellberg and Ms. Castille, Student started the school year with strong academic skills and was reading at grade level. His skills in writing and math were at or just below grade level. Regarding behaviors, Student no longer grabbed his aide, occasionally exhibited off-task behavior but was easily redirected, and infrequently touched his groin area. It is determined that Student's IEP continued to be appropriate at the beginning of the school year.

23. Student asserted that Berkeley failed to implement his September 24, 2012, IEP by eliminating his iPad at the beginning of first grade, and by failing to provide prior written notice to Parents of such. The September 24, 2012, IEP offer does not include an iPad. No specific assistive technology device was included in the IEP. The IEP offer

included assistive technology consultation and collaboration services to support his, “communication systems and strategies.” Those strategies included developing visual supports such as a communication board. Student also was given access, as appropriate, to an adaptive keyboard and manipulatives. Ms. Barnewolt testified that she used *her* iPad with Student as an incentive and reward for him to complete work. Ms. Castille did not use one as an incentive when Student transitioned into first grade. The fact that Student was given access to an iPad in kindergarten does not mean that it was required under his operative IEP. Berkeley was not required to provide prior written notice of the fact that Ms. Castille did not use an iPad with Student at the beginning of first grade as Ms. Barnewolt had, because an iPad was not required under his IEP. Accordingly, it is determined that Berkeley did not fail to implement Student’s September 24, 2012, IEP regarding an iPad.

#### ANNUAL IEP AND TEAM MEETINGS

24. Student’s annual IEP team meeting was scheduled for two hours to be held on September 19, 2013. During the summer prior to first grade, Student underwent an independent educational evaluation at Berkeley’s expense by Linda Haymes, behavioral and educational consultant. Dr. Haymes attended Student’s September 19, 2013, IEP team meeting and presented her report. Her determination regarding Student’s areas of need were consistent with the Berkeley members of Student’s IEP team. The presentation by Dr. Haymes and discussion about Student’s needs took approximately two hours. At that point, Student’s IEP meeting was continued to October 7, 2013, to review proposed goals, his behavior support plan, and other related services.

25. Prior to the October 7, 2013, IEP team meeting, Mother requested and was provided drafts of proposed goals and the revised behavior support plan. During the meeting Student’s progress toward his former goals was discussed as well as the proposed goals and the behavior support plan. The proposed goals addressed reading, writing, rhyming, math facts, adding numbers to 20, following routines, community safety, reading comprehension, joint attention, handwriting, expressive/receptive language, verbal expression with picture prompts, and social pragmatics. Student’s behavior support plan was revised to address Student curling up on the rug during circle time (a new behavior since he started first grade) and to eliminate incidents of inappropriate touching.

#### *PROPOSED GOALS*

26. During the IEP team meeting and again during hearing, Mother expressed her concerns with several of the goals. During the meeting she indicated that the present levels of performance were not specific enough or that they underreported Student’s ability and that the use of an iPad should be imbedded in each goal. During hearing Mother testified that she objected to several goals because they lacked a person responsible for the goals’ implementation. This specific concern was not expressed to the Berkeley members of Student’s IEP team at the time of the above team meetings.

27. The Berkeley members of Student's IEP team agreed to revise the language in the present levels of performance to be more specific but they disagreed that the present levels underreported Student's ability. Student's teachers and other service providers also asserted that it was inappropriate to imbed using an iPad into Student's goals. Ms. Mindel, Student's speech therapist, was persuasive that it would have been inappropriate because Student's primary mode of communication was spoken language. The emphasis needed to be on moving his expressive language forward and relying on an assistive technology device every time she worked with Student on his goals was counter indicated for developing expressive language. Ms. Ellberg and Ms. Castille agreed with Ms. Mindel's reasoning as applied to academics as well. While having access to assistive technology, including an iPad for occasional use may have been appropriate, imbedding an iPad into the goals was not, because it could lead to dependence or increased off-task behaviors. Regarding dependence for example, if Student was working on handwriting, using an iPad would not help but actually hinder his ability to produce letters. To address Mother's request, however, the Berkeley members of Student's IEP team agreed to provide Student access to an iPad in class for a 30 day trial. Mother accepted the iPad trial.

28. Following the meeting, the Berkeley members of Student's IEP team revised the present levels of performance and changed goals to include more specific information regarding the data that would be used to track Student's progress. Deborah Burns-McCloskey, Student's assistive technology service provider, gave Ms. Ellberg an iPad for Student's use that had been cleared of any non-academic game applications. Berkeley scheduled a follow up IEP team meeting for November 7, 2013, to finalize the goals, discuss the completed articulation assessment, and continued use of the iPad.

29. At the November 7, 2013, IEP team meeting, the revised goals were presented and a proposed articulation goal was added. Despite the revisions, Mother still asserted that the baselines or present levels of performance underreported Student's ability and the goals were not measurable, and that an iPad needed to be imbedded into each goal. These contentions were not supported by the evidence.

30. Student presented no credible evidence that Student's identified present levels of performance underreported his ability. Ms. Ellberg, Ms. Castille, and Ms. Mindel persuasively and unreservedly established that the baselines or present levels accurately reflected Student's abilities as they existed at that time. This evidence was consistent with the assessment results contained in Dr. Haymes' independent educational evaluation; in some instances, the IEP's present levels even exceeded those obtained by Dr. Haymes. For example, in reading (annual goal 1) it was reported that Student could identify 17 of 21 kindergarten sight words, 95 percent of the pre-primer Dolch sight word list and 60 percent of the primer dolch sight words taken from Ms. Perkins online list. Dr. Haymes reported that Student had half the expected reading skills for students entering first grade, knowing 15 sight words and starting to read vowel consonant vowel words. More weight was given to the accuracy of Ms. Ellberg, Ms. Castille, and Ms. Mindel's testimony regarding Student's baseline levels than Dr. Haymes' report because they worked with Student directly in a natural learning environment and were more familiar with his abilities overall. Moreover, no

credible evidence was presented that indicated Student's baselines or present levels of performance underreported his abilities.

31. As noted above, Student also asserted generally that the baselines and goals were not measurable and specifically objected to the community safety goal's achievability level. Each of the 14 proposed goals addressed Student's identified needs, were measurable annual goals that were based upon Student's present levels of academic achievement and functional performance, and that Student had a reasonable chance of attaining within a year. For example, using the reading baseline identified above, the annual goal contemplated that Student would read Ms. Perkins' primer online dolch sight word list with 100 percent accuracy and automaticity; reading the words within three seconds of the cue, in eight out of 10 trials as measured by teacher and charted in data sheets for the sight word program. Mother asserted that this was not measurable or specific because she did not have a copy of the list and was unaware of which specific words Student had read. Not having the data to the degree requested by Mother does not render the goals immeasurable. Additionally, it is determined that the other goals were equally as specific and measurable as the reading goal discussed above.

32. Student also objected to the community safety goal's achievability level. The baseline indicated that Student consistently identified some signs with 100 percent accuracy but inconsistently identified do not walk, do not enter, and poison. The proposed goal indicated that when shown a visual sign or after seeing one of the three inconsistently identified signs in the community, Student would correctly name them and explain their meaning in eight out of ten opportunities as measured by teacher data including the sign worked on, the prompt level he required prior to identification, and the explanation he gave for its meaning. Mother objected to this goal being achievable in only eight out of ten trials arguing that it should require 100 percent accuracy. Despite this assertion, no evidence was presented that the present level was inaccurate, that the goal was not measurable, or that he did not have a reasonable chance of attaining the goal within a year. Student's teachers and service providers consistently and persuasively testified that had Student achieved any goal, including the community safety goal, in less time, the IEP team would have reconvened to adjust the level of the goals. It is determined that Student's community safety goal is measurable and did not need to have 100 percent accuracy to be reasonably achievable within one year.

33. Student further alleged that the goals were inappropriate because IEP goals 1-6 and 8-10 failed to list a person responsible for their implementation. The goals actually list multiple people responsible for their implementation including Student's general education teacher, special education teacher, Student, staff, and Parents. Ms. Castille persuasively explained that ultimately she and the Berkeley members of Student's IEP team were responsible for implementing the goals; however, she included Student and Parents because they are members of Student's IEP team who also work on the areas addressed in the goals (for example, reading and writing). The evidence established that no expectation or burden was placed on Parents and Student because they were identified in the goals.

34. Student's final contention was that the use of an iPad needed to be imbedded into each goal. Ms. Burns-McCloskey has worked with Student since he was in preschool, first as a speech and language therapist and more recently providing assistive technology support. Of the Berkeley members of Student's IEP team, she was the strongest proponent of incorporating assistive technology strategies into Student's program. Even Ms. Burns-McCloskey did not think an iPad should be incorporated into each of Student's goals but that an iPad is one tool that could be used to assist Student compose written language. She also testified that appropriate assistive technology strategies and devices included low-tech and high-tech options such as a communication board, word banks, color graphics, visual scaffolds, access to a computer, and adaptive keyboard. Each of these was provided to Student. Other than Student's contention, no evidence was presented to indicate that Student's goals needed to include using an iPad. Student did not meet his burden in this regard.

#### *APPROPRIATENESS OF IEP OFFER*

35. It is determined that the revised goals offered by Berkeley at the November 7, 2013, IEP team meeting included accurate baselines or present levels of performance, were measurable, and were likely to be achieved in one year. They were designed to meet Student's unique needs and confer educational benefit.

36. To implement the goals, Student was offered: 1) specialized academic instruction for 30 minutes per day, 2) 50 30-minute sessions of direct occupational therapy and occupational therapy collaboration for 10 hours per year, 3) direct speech and language services for 2,250 minutes per year that equaled approximately two 45 minute sessions per week, 4) assistive technology consultation and collaboration for 25 hours per year, 5) one-to-one aide support except when Student was receiving direct services from the providers described above, 6) and transportation to and from school. Student was offered a behavior support plan addressing two behaviors, curling up during circle time and inappropriate touching. Student was also offered a 30 day trial period with the iPad. Student's IEP called for the following accommodations: 1) access to a computer on campus, 2) modified assignments in language arts and math, but use of essential standards as basis for instruction in all areas, 3) cues, prompts, and reminders for eye contact and on-task behavior, 4) offering choices, 5) sensory strategies including physical or gross motor activities before being asked to sit, 6) use of visuals, 7) present one task or direction at a time, 8) instructions repeated or rephrased, 9) check for understanding, and 10) access to separate study area. With the exception of the iPad, Parents did not consent to the IEP so the September 2012 IEP remained in effect up to hearing.

37. The Berkeley members of Student's IEP team were persuasive that the amount and frequency of services offered in the IEP and the proposed accommodations were appropriate to meet Student's unique needs and reasonably calculated to provide educational benefit. As discussed above, Parents' contentions were regarding the goals and not the amount and frequency of services. From the beginning of first grade, Student was performing at or near grade level in his academic subjects. Mother, Ms. Mindel,

Ms. Castille, and Ms. Ellberg established that Student's expressive language continued to emerge and become more understandable. Student was becoming increasingly engaged with his typically developing peers and even initiating spontaneous play, in particular with sports during recess and lunch breaks. It is determined that the final version of the IEP completed in November but dated September 19, 2013, was designed to meet Student's unique needs and was reasonably calculated to provide him educational benefit.

#### PARENTAL PARTICIPATION FROM SEPTEMBER – NOVEMBER 2013

38. Student asserted that Mother was denied meaningful participation in the September 19, October 7, and November 7, 2013, IEP team meetings because they were limited to one hour each. Mother asserted that due to her medical condition she requires more time to vocalize her concerns and review documents because she uses a page turner. Mother does require more time than most parents to verbally communicate and she also requires the assistance of another person to turn pages for her thereby extending the document review process. Even so, Student failed to meet his burden that an IEP team meeting was scheduled for or required to conclude within one hour. As noted above, the September 19, 2013, IEP team meeting was initially scheduled for two hours and it lasted that long. One of the two other IEP team meetings was scheduled for 90 minutes. Moreover, each witness who testified, including Mother, confirmed that meetings typically lasted an hour and a half or longer. Beyond the time frame, however, it is determined that Mother was an active participant of each IEP team meeting. She expressed her concerns and Berkeley members of the team responded by frequently incorporating her suggestions or requests for specificity and clarification into proposed goals. It was agreed at the conclusion of the September and October meetings that the team needed to reconvene. Due to the work that was taking place revising and refining goals, the follow up meetings were timely scheduled. In the interim, Berkeley members of the team and Mother were communicating as she was providing her feedback and requests for further changes. A parent has meaningfully participated in developing an IEP when he or she is informed of the child's problems, attends the IEP team meeting, is given the opportunity to express disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. The fact that each of Mother's requests was not incorporated into the IEP does not diminish her robust participation. It is determined that Mother meaningfully participated in Student's IEP team meetings.

#### FEBRUARY 11, 2014, IEP

39. Parent requested another IEP team meeting and it was held on February 11, 2014. During that meeting Student's teachers and service providers reviewed Student's work samples. They reviewed the proposed goals that had not been consented to and determined that they remained appropriate. Mother requested that the accommodation of modified work for language arts and math be removed. The other members of the IEP team agreed because Student's then current work samples revealed that he was working at or near grade level and that work was not being modified for him at that time. Ms. Acevedo, Ms. Castille, and Ms. Ellberg notified Mother that the target behaviors contained in the revised behavior support plan had been extinguished. Ms. Acevedo recommended

eliminating Student's behavior support plan. Mother also requested that Berkeley provide Student an iPad full time for use at home and school (with its imbedded use in goals as discussed above) and that it provide Pivotal Response Training. Berkeley declined both requests.

#### *I-PAD*

40. By February Student had had access to the iPad in class for approximately three months. During the trial period, Student was given the option of using the iPad for some activities but did not have unrestricted use. Student preferred to work with peers and that when given the iPad he seemed to use it more as a toy than an educational tool. Student was advancing in using applications such as Monkey Math. Ms. Burns-McCloskey concluded that Student benefited from a variety of assistive technology strategies and devices including an iPad. She did not establish, however, that Student needed the specific device of an iPad to meet his unique needs. Further, she did not have an opinion about whether or not he needed one for home use.

41. No credible evidence was presented that Student requires an iPad as a specific device full time at school and at home to increase, maintain, or improve his functional capabilities. Student's primary areas of need were to develop expressive language and enhance his social interaction. He also had fine motor needs. Convincing testimony was provided by Ms. Mindel and Ms. Barnewolt that an iPad was not appropriate to address either of these needs. Regarding Student's other needs, Ms. Burns-McCloskey and Ms. Ellberg testified that Student has access to a computer with a specialty keyboard that he used to help draft written assignments. He continues to make progress in all academic areas, behaviorally, and socially. It is determined that while Student still has a need for assistive technology to access the general education curriculum, he did not meet his burden to establish that he requires the specific device of an iPad to meet his unique needs.

#### *PIVOTAL RESPONSE TRAINING*

42. In the independent educational evaluation conducted by Dr. Haymes, she recommended Pivotal Response Training as a possible strategy for Student to help increase his socialization and expressive language skills. Mother made a formal request for Pivotal Response Training during the February 11, 2014, IEP team meeting. The Berkeley members of Student's IEP team did not believe it was necessary to meet Student's unique needs. This determination and the reasons supporting the conclusion are documented in the IEP team meeting notes.

43. Not only was Pivotal Response Training not necessary to meet Student's unique needs, by February 2014, it would have been inappropriate for Student because of the social, behavioral, and expressive language progress he had made. Ms. Acevedo established that Pivotal Response Training is based upon the principles of ABA therapy. The program is

primarily used as an early intervention for children on the autism spectrum with delayed speech. It is also intended to help develop social skills. One of Dr. Haymes' suggestions was to use the Circle of Friends component of the training, where peers are selected and socialization is facilitated by an adult. By February 2014, Student was very tuned into social cues and frequently initiated spontaneous play with peers. Berkeley witnesses were persuasive that Student did not need a social group selected for him because he was self-selecting and being accepted by his typically developing peers. Dr. Haymes did not testify at hearing, did not provide direct services to Student, and her assessment was conducted six months prior to the February 2014 IEP team meeting. More weight was given to Ms. Acevedo's testimony because it was consistent with Student's teachers and service providers, she is knowledgeable about Student's needs having worked directly with him for more than a year and she has a master's degree in counseling with an emphasis in ABA. It is determined that Student did not require Pivotal Response Training to meet his unique needs.

#### *APPROPRIATENESS OF IEP OFFER*

44. The only substantive changes recommended for Student's IEP offer in February 2014 were removing the accommodation of modified work and eliminating the behavior support plan. It is determined that eliminating modified work was appropriate in light of Student's continued academic progress. Regarding the behavior support plan, the evidence established that Student no longer exhibited behaviors in class that interfered with his ability to access his education. This was consistent with his classroom teacher, Ms. Ellberg, and his specialized academic instruction provider, Ms. Castille's observations. Student presented no evidence that he continued to have behavior needs as of February 2014. It is determined that the proposal to eliminate the positive behavior support plan was appropriate. The IEP offer including goals, accommodations, and services continued to be appropriate to meet Student's unique needs and was reasonably calculated to provide educational benefit.

#### *RECORDS REQUEST*

45. Student's amended complaint alleges that Berkeley failed to provide Parents a complete copy of Student's records upon request. The records identified in the complaint that were not produced were IEP team meeting notes from the February 11, 2014, IEP team meeting, all but two correspondences from parents to Berkeley, assessments, behavior reports, and "2/3 of educational record."<sup>2</sup> During hearing, however, Mother expanded the list of documents she did not receive to include data logs related to Student's behavior support plan, disciplinary records, teacher correspondence, and internal teacher notes and emails. It is determined that the list of documents identified by Mother during the hearing that were not included in Student's amended complaint, are outside the scope of this hearing, and are not considered in this decision.

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<sup>2</sup> No evidence was presented to clarify what documents constitute "2/3 of educational record." Student failed to meet his burden regarding this contention.

46. Student's amended complaint alleges that Berkeley failed to comply with Parents' records requests from December 2013, February, and March of 2014. During the hearing Mother could not recall specifically how or when she made records requests in December 2013 or March 2014. Student's complaint asserts that his attorney made a formal records request on February 14, 2014. Student did not meet his burden to show that a records request was made in December 2013 or March 2014. Student also did not meet his burden to show that a complete copy of his student records was not produced in response to his attorney's request.

47. Regarding IEP team meeting notes from February 11, 2014, Mother was not clear in her testimony which, if any, pages were missing.<sup>3</sup> There was no evidence presented of additional steps she took to obtain any missing pages. Student failed to meet his burden that he did not receive a complete copy of the IEP team meeting notes from February 11, 2014.

48. Student's complaint indicates that Parents provided Berkeley with copies of emails and letters, asked that those copies be included in Student's records, and that only two such communications were produced in response to the record's request. This assertion was not supported by the evidence. Mother did not establish that she provided documents to Berkeley asking that they be incorporated into his student records. No evidence was presented that any documents, if provided, were or should have been included in Student's records. Further, to have proven this contention would have necessarily meant that Parents already had each of these documents in their possession before making the records request. Student did not meet his burden regarding this contention.

49. The only assessment that Mother testified she did not receive was a copy of an audio file made by Ms. Mindel while she was conducting Student's articulation assessment. Ms. Mindel credibly testified that she transcribed the audio file and included a transcription of it in her assessment report. She then deleted the audio file as is consistent with her standard practice. The assessment report includes the transcription consistent with Ms. Mindel's testimony. Accordingly, this assessment component was produced.

50. According to Mother, she wanted to see behavior reports documenting the times that Student's aide took Student to the office to speak with the Principal. According to Ms. Montano, on the few occasions that she took Student to the Principal's office, the Principal would speak to Student but no behavior report was generated. Student did not meet his burden to establish that any behavior reports exist to have been produced.

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<sup>3</sup> Student's attorney asserted that Berkeley produced every other page of the IEP team meeting notes in response to her record's request. Mother was not able to confirm this assertion through her testimony. Student's attorney's assertion does not constitute evidence and was not relied upon to support this contention.

51. It is determined that Student did not meet his burden to establish that Berkeley failed to produce a complete copy of his educational record when requested by his attorney in February 2014.

#### TRANSPORTATION

52. Student alleges that Berkeley terminated his transportation services in February 2014 to an extracurricular activity and failed to provide prior written notice of this decision. Parents had not consented to the IEP's offered during the 2013-2014 school year. The operative IEP in February 2014 was the one consented to in November 2012. That IEP also provided for round trip transportation for Student to and from school. In February 2014, Mother asked for transportation to be extended so that rather than bringing him home after school, he would be driven home at the conclusion of an after-school tutoring program that was not part of his special education program or services. Student's IEP team denied the request. Student's IEP team determined that he did not require the after-school program to meet his unique needs because those needs could be met during the regular school day with the services and supports offered in his IEP. Accordingly, the extracurricular activity was not a related service under the IDEA. Student's related transportation service was not terminated as he remained eligible to be transported to and from school. It is determined, however, that Student was not entitled to transportation home from the extracurricular program because it was unrelated to his special education program and services.

#### LEGAL CONCLUSIONS

##### *Introduction – Legal Framework under the IDEA<sup>4</sup>*

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and

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<sup>4</sup> Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

<sup>5</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

conform to the child’s IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services.]) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures with the participation of parents and school personnel that describes the child’s needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services, which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child and “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer*) [In enacting the IDEA . . . , Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.*, at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3) (C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a

preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student has the burden of proof.

### *Procedural Compliance*

5. Under the IDEA, in cases alleging a procedural violation, an ALJ may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or deprived the Student educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii).) California has enacted a similar statute that prohibits an ALJ from basing a decision solely on non-substantive procedural errors, unless the ALJ finds that those errors resulted in a loss of educational opportunity to the pupil or interfered with the parent or guardian's right to participate in the process of formulating the IEP. (Ed. Code, § 56505 subd. (j).)

6. Procedural inadequacies that result in a loss of educational opportunity or seriously infringe on parents' opportunity to participate in the IEP formulation process clearly result in a denial of FAPE. (*Shapiro v. Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078; see also *Amanda J. v. Clark County School Dist.*, (9th Cir. 2001) 267 F.3d 877, 892.) "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994].)

#### ISSUE 1: AUDITORY PROCESSING ASSESSMENT

7. Student asserted that Berkeley failed to conduct an auditory processing assessment beginning with his triennial assessment in April 2012 and therefore failed to determine if he had a need in that area. A pupil must be assessed in all areas related to his or her suspected disability. (Ed. Code, § 56320, subd. (f); 20 U.S.C. § 1414 (b)(3).) In this case, Student's auditory processing ability was assessed by both school psychologist Ms. McKenna and by speech and language pathologist Ms. Kiefer. Although Ms. McKenna was not able to obtain standard scores using one of the testing instruments, both assessors determined that Student had an auditory processing deficit. This information formed the basis of several of his speech and language goals as well as numerous accommodations he was provided. Berkeley conducted an auditory processing assessment, determined he had needs in this area, and adequately addressed that need. Accordingly, Student was not denied a FAPE in this regard.

#### ISSUE 2: PROCEDURAL AND SUBSTANTIVE FAPE FROM APRIL 15, 2012, THROUGH THE 2012-2013 SCHOOL YEAR

*ISSUE 2 A I: MEANINGFUL PARTICIPATION IN PRESCHOOL TO KINDERGARTEN IEP*

8. Federal and state law require that parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provisions of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group making decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Protection of parental participation is “[a]mong the most important procedural safeguards” in the Act. (*Amanda J.*, *supra*, at p. 882.)

9. A school district is required to conduct, not just an IEP team meeting, but also a meaningful IEP team meeting. (*Target Range*, *supra*, 960 F.2d at p. 1485; *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) The standard for “meaningful participation” is an adequate opportunity to participate in the development of the child’s IEP. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133.)

10. A parent has meaningfully participated in the development of an IEP when the parent is informed of the child’s problems, attends the IEP team meeting, expresses her disagreement with the IEP team’s conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693.) A 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. (*Fuhrmann*, *supra*, 993 F.2d at p. 1036.)

11. The facts in this case do not support a finding that Parents did not meaningfully participate in Student’s IEP development. Mother actively participated in the IEP team meetings conducted to discuss Student’s transition from preschool to kindergarten. She offered her input regarding Student’s needs and her concerns. The Berkeley members of Student’s IEP team thoughtfully considered her concerns and the offer regarding the appropriate combination of supports and services was made in response to Mother’s decision to place Student at Cragmont. Berkeley did not commit a procedural violation of the IDEA regarding Mother’s meaningful participation.

*ISSUE 2 A II: PRIOR WRITTEN NOTICE REGARDING AIDE*

12. A school district must provide written prior notice to the parents of a child whenever it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a).) The notice shall include a description of the action the school district proposes or refuses; an explanation of why the school district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action; a statement that the parents have procedural safeguards; if the notice is not an initial referral for evaluation, the procedure to obtain a copy of the procedural safeguards; sources the parents

may contact to obtain assistance; a description of other options considered by the IEP team and the reason those options were rejected; and a description of the factors relevant to the school district's proposed or refused action. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

13. Mother asserted that Berkeley failed to provide her prior written notice of its decision to remove Student's one-to-one aide for the 2013 extended school year. It was determined that Student failed to meet his burden to establish that Berkeley intended to or did remove his aide during the extended school year. Accordingly, the legal requirement to send prior written notice was not triggered.

*ISSUE 2 B I-III: FAILURE TO MEET STUDENT'S NEEDS*

14. Student argued that Berkeley denied him a FAPE from April 2012 through the 2012-2013 school year because the operative IEP's failed to adequately plan for his transition from preschool to kindergarten, and did not offer appropriate goals or sufficient services to meet his academic, speech and language, behavior, and mental health needs.<sup>6</sup>

15. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and that the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

16. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. §1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. §1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

17. An IEP must also contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual

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<sup>6</sup> Student also argued in Issue 2(b)(iii) that Berkeley failed to implement his IEP by failing to provide a one-to-one aide during the 2013 extended school year. This contention was analyzed above in the section regarding prior written notice. The conclusion that Student did not meet his burden of establishing that Berkeley failed to provide his one-to-one aide during the extended school year applies to this contention as well. Accordingly, it will not be analyzed again here.

goals and to be involved in and make progress in the regular education curriculum; and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

18. The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Rowley, supra*, 458 U.S. at 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir.1987) 811 F.2d 1307, 1314.) As long as the school district's offer was reasonably calculated to provide educational benefits, it constitutes an offer of a FAPE. (*Rowley, supra*, 458 U.S. at 200.)

*April 23, 2012 IEP*

19. In April 2012 Student's IEP team conducted an early triennial assessment. These assessments confirmed that Student had severe expressive and receptive language delays coupled with atypical behaviors that impacted his ability to interact with typically developing peers. Student had basic academic skills but had difficulty generalizing that knowledge. Student also demonstrated fine motor deficits that impacted his handwriting ability. Student's IEP team developed measurable goals that addressed each area of need. Student's IEP team discussed different placement options and determined that an inclusive general education kindergarten with daily specialized academic instruction support would meet his needs. Student's IEP team then went a step further and brought in Ms. Barnewolt, his anticipated kindergarten case manager, to observe Student and help select his kindergarten teacher among a group of potential teachers. Ms. Barnewolt observed Student in his preschool class and then went back and conferred with the Principal at Cragmont to hand-select the receiving teacher. Student's IEP team also concluded that he required related services to help him benefit from his special education services and offered occupational therapy, assistive technology, speech and language, and transportation. Student's IEP included a variety of accommodations to help him access his general education curriculum. Student's IEP team offered an IEP that was designed to meet his unique needs and was reasonably calculated to provide academic support. It is determined that the IEP was appropriate at the time it was offered and also was designed to help support his transition to kindergarten.

20. Student's assertion that his IEP did not adequately plan for his transition to kindergarten is premised on the fact that once Student started Kindergarten, he developed new negative behaviors that interfered with his ability to access his education, such as running around the room, hiding under his desk, and inappropriately touching himself. In essence, Student argues that if the April IEP had been appropriate, these behaviors would not have arisen. Student cited no law indicating that a school district's legal obligation for a child transitioning from preschool to kindergarten differs from the obligations set forth above. Additionally, an IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective." (*Id.* at p. 1149, quoting

*Fuhrmann, supra*, 993 F.2d at p. 1041.) An IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*; see also *Carlisle Area School v. Scott P.* (3d Cir. 1995) 62 F.3d 520, 534; *Roland M. v. Concord School Comm.* (1st Cir. 1990) 910 F.2d 983, 992, cert. denied, 499 U.S. 912 (1991).)

21. Student's behaviors after entering kindergarten, by all accounts, were new. Even though Ms. Johnson explained that many children have difficulty transitioning to kindergarten, it would have been impossible to predict if Student would have been one of those children. Student's IEP team took additional steps, such as not risking having to change teachers after the Gentle Beginnings program, to help minimize the impact of the transition to kindergarten. Student's IEP team designed his program and services around what was objectively known at the time it was developed. The fact that he presented with new behaviors at the beginning of kindergarten does not overcome its appropriateness at the time it was offered. Moreover, from April through the beginning of kindergarten, Student received educational benefit under his operative IEP.

22. It is determined that Student's April 2012 IEP constituted an offer of FAPE. The IEP continued to provide Student a FAPE throughout the time it was operative.

*September 24, 2012 IEP*

23. Student started in Ms. Johnson's kindergarten class at Cragmont on August 29, 2012. As discussed above, Student began exhibiting new behaviors not seen in preschool. Approximately three weeks later, Student's IEP team met to address these concerns. At that time, Student's IEP was adjusted to include a one-to-one aide. Goals were augmented to include three new goals to address reading, and increasing on-task behavior, and eye-contact. An accommodation for sensory breaks was added. Finally, Student's assistive technology and occupational therapy time was increased. The team also agreed to conduct a functional behavior assessment. In response to Mother's request that individuals working with Student have prior experience or training working with children with autism, Berkeley replaced the assigned behaviorist with Ms. Acevedo who had the desired qualifications.

24. Student's IEP team did not wait for the functional behavior assessment to be completed to determine if he required an aide, it offered and provided one immediately. The other adjustments were also designed specifically to address Student's needs as they existed at the beginning of kindergarten. Berkeley responded swiftly and appropriately to Student's changed needs. The September 2012 IEP was designed to meet Student's unique needs and was reasonably calculated to provide educational benefit. Accordingly, it is determined that the September 24, 2012, IEP was an offer of FAPE.

*December 10, 2012, IEP*

25. Student's IEP team convened again in December 2012 after the functional behavior assessment was complete. Ms. Acevedo presented a draft positive behavior support

plan. It was specifically designed for Student and aimed to reduce three target behaviors that interfered with his ability to learn. Student's IEP was revised to include additional strategies such as pre-teaching. Additional goals were added to implement those strategies. It was also determined that Student would continue to have a one-to-one aide. Ms. Acevedo credibly and persuasively established that based upon her knowledge and experience, Student's conduct was behaviorally based, on not the result of autism or mental health needs. She designed a behavior support plan, along with the other adjustments to the IEP, to meet Student's unique needs and confer educational benefit.

26. Student's amended IEP conferred educational benefit. Throughout the remainder of the 2012, school year Student made progress in all areas of need, including expressive language and social interaction with his typically developing peers. Student finished kindergarten with strong reading skills and was performing at or near grade level in all academic areas. It is determined that the December 10, 2012, IEP offered and provided Student a FAPE.

#### *June 3, 2013, IEP*

27. Student's IEP team met in June 2013. The only substantive change to his IEP was to include a one-to-one aide for the extended school year and into first grade. Student's next annual IEP was scheduled for September. It is determined that this adjustment continued to be appropriate for Student.

28. Regarding all contentions in Issue 2, it is determined that Student failed to meet his burden to establish either a procedural or substantive denial of FAPE from April 15, 2012, through the 2012-2013 school year, including the extended school year.

### ISSUE 3: PROCEDURAL AND SUBSTANTIVE FAPE FOR THE 2013-2014 SCHOOL YEAR

#### *ISSUE 3 A I: MEANINGFUL PARTICIPATION FALL 2013 IEP TEAM MEETINGS*

29. Student argued that Mother was denied meaningful participation in the IEP team meetings held on September 19, October 7, and November 7, 2013, because the meetings were scheduled for an hour which did not provide her enough time to offer her input. First, it was previously determined that Student did not establish that meetings were scheduled, or only conducted, for one hour. The September 19, 2013, IEP team meeting was scheduled for, and lasted, two hours. By Mother's own testimony, IEP team meetings typically lasted approximately 90 minutes. Moreover, Student failed to establish that the meetings' scheduled lengths denied her meaningful participation. To the contrary, the evidence overwhelming supports the conclusion that Mother meaningfully participated in all three IEP team meetings. She offered insightful comments to which the Berkeley members of Student's IEP team responded by revising the baselines and goals to include more specific data. Just because each of Mother's suggestions was not adopted by the IEP team does not mean that she was denied meaningful participation. As noted in Issue 2 above, the standard for "meaningful participation" is an adequate opportunity to participate in developing a child's IEP. Mother had an opportunity to discuss Student's IEP and her concerns were

considered. It is determined that Mother was not denied meaningful participation in the IEP team meetings held in the fall of 2013 due to the meetings' lengths or otherwise.

*ISSUE 3 A II: DISCONTINUED TRANSPORTATION WITHOUT PRIOR WRITTEN NOTICE*

30. As cited above, a school district is required to provide prior written notice when it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child.

31. The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) travel in and around school buildings; and (iii) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.24(b)(15)(1999); 34 C.F.R. § 300.34(c)(16) (2006).) Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006); see also 34 C.F.R. Pt. 300, Attachment 1, § 300.24 (1999).)

32. Berkeley did not eliminate or propose to eliminate Student's transportation to and from school. Student's special education program and services were provided during the regular school day. Parents elected to sign Student up for a voluntary extracurricular activity unrelated to the provision of FAPE. Berkeley continued to meet its obligation to provide Student daily transportation to and from school. Berkeley's decision not to agree to a request unrelated to the provision of FAPE does not trigger the requirement for prior written notice. Berkeley, therefore, did not commit a procedural violation of the IDEA by failing to send prior written notice.

*ISSUE 3 A III: DISCONTINUED ASSISTIVE TECHNOLOGY WITHOUT PRIOR WRITTEN NOTICE*

33. The IEP team must consider assistive technology needs in determining the child's educational program. (20 U.S.C. § 1414 (d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v).) An "assistive technology device" is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. (14 U.S.C. § 1401(1); 34 C.F.R. § 300.5.) An "assistive technology service" is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. (34 C.F.R. § 300.6.) Assistive technology devices, services, or both, must be made available to a child with a disability if required as a part of the child's special education, related services, or supplementary aids and services. (34 C.F.R. § 300.105.)

34. Student argued that at the beginning of first grade, Berkeley eliminated his iPad without prior written notice. Berkeley asserted that although Student was eligible and received assistive technology; his operative IEP at the beginning of first grade did not specify an iPad. Ms. Barnewolt used her iPad with Student intermittently in kindergarten as an incentive and reward for work. It was not incorporated into Student's IEP. It is determined that since Berkeley did not reduce or eliminate any component of Student's agreed upon

assistive technology services under his IEP, it was not required to provide prior written notice.

*ISSUE 3 A IV: STUDENT RECORDS*

35. Education Code section 56504 states in relevant part that, “[t]he parent shall have the right and opportunity to examine all school records of his or her child and to receive copies...within five business days after the request is made by the parent, either orally or in writing.”

36. Student’s complaint alleged that Mother requested records in December 2013 and March 2014. Student also asserted that his attorney requested records in February 2014. It was determined that Student only established that records were requested on February 14, 2014. The records identified in the complaint that were not produced were IEP team meeting notes from the February 11, 2014, IEP team meeting, all but two correspondences from parents to Berkeley, assessments, behavior reports, and “2/3 of educational record.” During hearing, Mother testified to several other categories of documents that were not provided. Title 20 United States Code, section 1415, subsection (f)(3)(B), and Education Code section 56502, subsection (i), provide that a petitioner is not permitted to raise issues at hearing that the party did not raise in the due process petition, unless the other party consents. Berkeley opposed expanding the issues to include the additional documents. Accordingly, this decision is limited to the specific documents and categories of documents identified in the complaint.

37. Student did not meet his burden to establish that Mother did not receive a complete copy of the meeting notes from the February 11, 2014, IEP team meeting. Parent also did not establish what, if any, correspondence it provided to Berkeley became part of Student’s educational records. Even if Student had met his burden as to these two sets of records, it would have constituted a procedural violation of the IDEA. A procedural violation does not constitute a denial of FAPE unless it impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or deprived the Student educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii).) In this case, even had Student established that these particular documents were not produced, he would not have met the second prong of the analysis. As to the IEP team meeting notes, Mother received them at the time of the IEP team meeting. As to the correspondence documents, Mother provided no clarity regarding which, if any, documents were given to Berkeley and whether or not they were made part of Student’s records. Student effectively established that Parents had copies of these documents, and therefore, this violation would not have risen to a denial of FAPE.

38. Student asserted that Berkeley did not produce an audio file that was part of Ms. Mindel’s articulation assessment. This contention was not supported by the evidence. Ms. Mindel transcribed the audio file and included the transcription in her assessment report that was provided as part of the records request. Therefore, no procedural violation of the IDEA occurred regarding the audio file.

39. Student also asserted that Berkeley did not provide copies of behavior reports from kindergarten when he first transitioned to Cragmont and began exhibiting negative behaviors. Student did not establish that any behavior records existed. On the contrary, Ms. Montano, Student's one-to-one aide, established that no behavior reports were generated when Student met with the principal. Accordingly, no procedural violation of the IDEA occurred regarding the failure to produce behavior reports that did not exist.

40. Student's final contention was that "2/3 of educational record," was not produced. This assertion is unclear and no evidence was presented indicating what documents were not produced. No procedural violation of the IDEA occurred regarding this contention.

41. Student did not meet his burden to establish that Berkeley committed a procedural violation of the IDEA by failing to produce student records in response to his February 14, 2014, request. Even had he established that some documents were not produced, such as some pages of IEP team meeting notes and correspondence, in this case those omissions would not have risen to the level of a denial of FAPE.

*ISSUE 3 A V: PRIOR WRITTEN NOTICE FOR PIVOTAL RESPONSE TRAINING*

42. Mother requested Pivotal Response Training during the February 11, 2014, IEP team meeting. An IEP document itself can serve as prior written notice. (71 Fed.Reg. 46691 (Aug. 14, 2006).) Ms. Acevedo explained persuasively to the IEP team why she believed Pivotal Response Training was not appropriate for Student in February 2014. The IEP team meeting notes captured this rationale and specified that Student was functioning at a higher level than when the IEE was conducted and therefore, Pivotal Response Training was not appropriate. It is determined that the IEP team meeting notes include a description of Berkeley's refusal to provide the service and an explanation of why it refused to take the action. In this case, sufficient information was provided during the meeting and documented in the meeting notes to constitute prior written notice of the Berkeley's decision regarding Pivotal Response Training.

*ISSUE 3 A VI: FAILURE TO TIMELY COMPLETE ARTICULATION ASSESSMENT*

43. The district must deliver an assessment plan to a parent within 15 days of an assessment request. An IEP meeting to review the assessment results must occur within 60 days of the receipt of parental consent for the assessment, not counting days between the student's school sessions and vacations in excess of five school days. (Ed. Code, § 56321, subd. (a).)

44. During an IEP team meeting on June 3, 2013, Student's team discussed his speech and language needs. Ms. Mindel suggested that articulation was likely an area of need for Student. Mother requested an articulation goal be drafted and implement during the extended school year. Ms. Mindel said an assessment had to be conducted first and suggested deferring the assessment to the fall to give Student time to further develop his

articulation ability. It was determined previously that Student's IEP team, including Mother, agreed to defer the assessment to the fall. The first day of school was August 28, 2013, and Ms. Mindel provided Mother an assessment plan on September 10, 2013. Mother returned the signed assessment plan on September 18. Thereafter, the assessment was conducted and a timely IEP team meeting was held on November 7, 2013, to discuss the plan. The request to assess was deferred until the beginning of the school year on August 28. An assessment plan was provided within fifteen days of the start of the school year and the IEP team meeting was held within sixty days from the day consent was received. Therefore, Berkeley did not fail to conduct a timely articulation assessment.

45. Even had Mother not agreed to defer the articulation assessment to fall, the IEP team meeting was still held within the required timeline. Eleven days elapsed from the request (June 3) until the last day of the school year (June 14). Not counting the days between the end of the regular school year and the first day of school (August 28), an additional 14 days elapsed for a total of 25 days. Under this scenario, the assessment plan arguably was provided 10 days late. That would constitute a procedural violation of the IDEA's requirement that the assessment plan be provided within 15 days of the request. Student's IEP team meeting, however, was held within 50 days of receiving Mother's consent. Therefore, even if this would have been considered a procedural violation of the IDEA, it would not have risen to a denial of FAPE. Even with a 10 day delay in providing the plan, that delay was effectively cured because the actual meeting was held within 50 days, rather than 60 days, of receiving consent. There was no evidence presented indicating that the assessment needed to be conducted in fewer than 60 days to meet Student's needs.

46. Student's articulation assessment was timely. Student, therefore, was not denied a FAPE as a result of the timeliness of the assessment.

47. Student did not establish that he was denied a FAPE based upon any alleged procedural violations for the 2013-2014 school year.

ISSUE 3 B I-IV: SUBSTANTIVE DENIAL OF FAPE DURING THE 2013-2014 SCHOOL YEAR, INCLUDING THE EXTENDED SCHOOL YEAR

48. Student's IEP team met four times during that year on September 19, October 7, November 7, 2013, and February 11, 2014. Although the first IEP document is dated September 19, Student's annual IEP offer was not finalized until the November 7, 2013, IEP team meeting. Parents did not consent to any proposed IEP during the 2013-2014 school year.

*APPROPRIATENESS OF IEP DATED SEPTEMBER 19, 2013*

49. Student's IEP team members worked extensively throughout the fall to draft very specific and detailed measurable goals addressing each of his areas of need. The goals were based upon Student's then present levels of performance, were measurable, and were

reasonably capable of being obtained within one year. Student's contention that the baselines underreported his ability was not supported by the evidence.

50. Student also argued that the IEP goals were flawed because several did not list a person responsible for their implementation. The law, however, does not impose a requirement that a person be listed as responsible for implementing goals. As noted in Issue 2 above, regarding goals, the IEP must contain a statement of how the child's goals will be measured, (20 U.S.C. §1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) and it must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c)). Student presented no authority to the contrary. Therefore, Student could not establish a procedural violation of the IDEA because no procedural requirements were violated. Moreover, it was determined that no confusion existed over the fact that ultimately it was the Berkeley members of Student's IEP team that were legally responsible for implementing Student's goals and no additional burden was placed on Student or Parents.

51. It is determined that Student did not meet his burden to show the proposed goals were not substantively appropriate. To the contrary, it was established that the goals were designed to meet Student's unique needs and reasonably calculated to provide him educational benefit.

52. To implement the goals, Student was offered daily specialized academic instruction, weekly direct occupational and speech and language therapy services, additional consultation in both, assistive technology consultation and collaboration for 25 hours per year, one-to-one aide support except when Student was receiving direct services from the providers described above; and transportation to and from school. Student's IEP contained a revised behavior support plan addressing two behaviors, curling up in a ball during circle time and inappropriate touching. Student's IEP included several accommodations to be provided in his general education first grade class. Student was also offered a 30 day trial period with the iPad.

53. Student had made tremendous progress during kindergarten and there was no evidence presented that such progress would not have continued had Parents consented to the offered IEP in first grade. It is determined that the final version of the IEP dated September 19, 2013, but completed on November 7, 2013, was designed to meet Student's unique needs and was reasonably calculated to provide him educational benefit. Accordingly, Student's IEP dated September 19, 2013, constitutes an offer of FAPE.

#### *APPROPRIATENESS OF IEP DATED FEBRUARY 11, 2014*

54. Student's IEP team met again in February to determine if any adjustments needed to be made to his prior IEP. The team determined that his goals and level and combination of supports and services remained appropriate. The only two substantive changes to the IEP were to eliminate modified work and the positive behavior support plan. Both of these changes were appropriate since it was established that he no longer needed

modified work to perform at or near grade level and that he no longer exhibited behaviors at school that interfered with his ability to learn.

55. In addition to the objections analyzed regarding the September 19, 2013, IEP, Student also asserted that he required Pivotal Response Training and a dedicated iPad to meet his needs. The evidence does not support these allegations. It is determined that the February 11, 2014, IEP constituted an offer of FAPE.

56. Student did not establish any procedural or substantive violations of FAPE for the 2013-2014 school year.

### REMEDIES

1. ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).

2. It was determined that during the time period at issue in this case, Berkeley offered or provided Student a FAPE. Accordingly, his request for remedies is denied.

### ORDER

All of Student's claims for relief are denied.

### PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Berkeley prevailed on all 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).)

DATE: November 17, 2014

/s/

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JOY REDMON

Administrative Law Judge

Office of Administrative Hearings